

MINUTES
Montana Fish, Wildlife & Parks Commission Meeting
Helena Headquarters
1420 East Sixth Avenue
Helena, MT 59620
December 13-14, 2001

Commission Members Present: Dan Walker, Chairman; Tim Mulligan, Vice-Chairman; Darlyne Dascher; John Lane and Mike Murphy.

Fish, Wildlife & Parks State: Jeff Hagener, Director; and other Department personnel.

Guests: Kelly Gorin, Governor's Office; Robin Cunningham, FOAM; Jim McDermid, Madison River Canoe Club, Great Falls; Writer Clayton, Big Timber; Jim Martin, Commercial Fishing, Helena; Tom Benedict; U.S. Forest Service (USFS); Mike Herrin, USFS; Carl Davis, USFS; Dave Payne, USFS; J. Packard, USFS; John Hagenruber, USFS; John Gibson; MT Wildlife Federation (MWF); Stan Frasier, MWF; Chris Beebe, MWF; Don Nickman, PPSA; Jim Voeller, Kalispell; Bill Orsello, Helena Hunters & Anglers; Kevin Devine, Great Falls; Mike Bushly, Great Falls; Lisa Lovell, Helena; Peggy O'Neill; Helena Independent Record; John Kowalski, PRO Outfitters; Lance Lovell; Smith River Landowners' Assoc.; William Galt, Smith River Landowners' Assoc.; Jean Johnson, MT Outfitters' & Guides Assoc. (MOGA); Mary Ellen Schnur; MOGA; Mark Kambich, Divide; Sterling Miller; NGO; Kent Brown; MBA; Mark Baker, MT Bowhunters Assoc. (MBA); Charlie Johnson, MBA; Stan Rauch, MBA; Senator Duane Grimes, Senate District 20, Helena; Gary Marbut; MSSA; Debby Barrett, Dillon; Pat Descheemaeker, Lewistown; Andrew McKean, Natl. Wild Turkey Federation; Elaine Mann, Broadwater Commissioner; Bernard Rigdon, Helena; Karole Lee, Clancy; Vito Quatraro, Headwaters Fish & Game Assoc.; David Clark, Winston; Cliff Cox, Winston; David Cole, Helena; James Clawson, Western MT Fish & Game Assoc.; Lane Adamson, Madison Valley Ranchlands; Rogue Wardell, Helena; Monte Schnur, MOGA; Jeff Schuller, Helena; Mary Schuller, Helena; C.T. Canterbury, Helena; Ralph Martin, AMO, Inc.; Virginia Knerr, Townsend; Leslie O'Neil, Clancy; Mike Bay, Helena; Buzz Isfeld, Big Fork; Virgil Binkley, Broadwater Rod & Gun Club; Ed Finstad, Elkhorn CRM Committee.

Present but did not sign in: Gary Hamel, John Crumley, David Hoon

Topics of Discussion:

- 1. Work Session on FWP Budget Development Process**
- 2. Opening - Pledge of Allegiance**
- 3. Approval of Commission Minutes, November 8, 2001**
- 4. Approval of Commission Expenses, November 2001**
- 5. 2002 Commission Calendar**
- 6. Adopt Commercial Fishing Regulations - Final**
- 7. Fishing Derby Rules - Tentative**
- 8. Hookham Proposal for New Fishing Access Site in R-3 - Final**
- 9. Closures for Bynum and Bean Lakes - Final**

10. License Fee Refund for Two-day Fishing License - Final
11. Wayfarers State Park Donation - Tentative
12. Smith River Rule - Final
13. Snowmobile Water Skipping ARM Rules - Tentative
14. Kootenai Falls WMA Rules - Final
15. Prairie Dog Plan, ARM Amendment, and Annual Rule - Information
16. Game Damage Season Permit Quotas - Tentative
17. Spring Turkey Season and Quotas - Tentative
18. Bighorn Sheep Transplant Priorities - Final
19. Deer, Elk and Antelope Seasons and Regulations - Tentative
20. Moose, Sheep and Goat Seasons and Regulations - Tentative
21. Black Bear Seasons and Spring Quotas - Tentative
22. Hunting District Boundary Changes - Tentative
23. 2003 General Season Framework Dates - Tentative
24. Upland Bird Seasons - Tentative

December 13, 2001

Dan Walker, Chairman, opened the morning work session at 8:15 a.m. by introducing **Dave Mott, Chief of Administration & Finance**, who will lead the session with a discussion on the FWP budget development process. The Department drafted a policy statement on the Commission's role in review and approval of the department's biennial budget proposal presented to the Governor. The policy is based on existing statutes and past practices of the Commission.

Wanted to show the Commission an example of the type of materials used in the past and then finish by talking about how the Commission wishes to proceed with that role of reviewing the budget as well as giving the Department some direction on how we should prepare for the next few months.

There are statutory requirements that must be met in preparing a budget that is ultimately submitted to the legislature by the Governor. As far as the Commission's role, Section 87-1-301 (1)(f) MCA states that the FWP Commission must "review and approve the department's budget prior to its transmittal to the budget office." That's what we're trying to zero in on here today as well as how the Commission wishes to proceed with that responsibility. The FWP Commission and department have concluded the Commission's authority and role is to advise the Governor and Director on the budget proposal that the department is required by statute to send to the Governor. The FWP Commission will review and approve priorities that the department uses to develop the budget. This review and approval of priorities occurs early in the budget process, typically about 12 months before the regular legislative session convenes. Approximately six months later, the department will return to the Commission for final review and approval of the budget details, including the capital program, and any significant changes in the operating budget from the current biennium.

Implementation is a two-step process. In the first step, draft priorities used to prepare the budget are presented to the commission along with charts on key accounts projecting available cash

balances. Also included is a description of the accounts within the agency, most of which are earmarked and restricted in some manner by the legislature. The Commission then gives direction on priorities for establishing the budget. To give you an example of what we've used in the past, it's assembled in one document but there are white pages and there are green pages. The white pages reflect what we did early in the process. That's looking at the department priorities. Rather than just looking at priorities, I wanted to show the Commission some of the bigger pictures of our main accounts looking at how much money is available, and how much money is projected to be available for several years out so we can all see the relative financial condition of the agency before we launch off into writing detailed budgets for that. That's the purpose of all those charts and graphs.

In the next step (shown on the green sheets in the packet of material), the department returns with details of the budget proposal including work efforts that address priorities and technical adjustments due to other rules and statutes. Some of those technical adjustments are things you have to do to conform to the requirements of the Governor's office and the Legislative Branch on making certain adjustments. Also buried in there are changes in what we call our present law-based budget, where there could be some increased spending and changes in direction. The last piece is broken out separately, and it is our capital budget. This capital budget is for major maintenance, habitat improvements and land protection. It's about a \$20+ million program.

That's it at a high level. It does follow the process used in the past, which may not be what this Commission wants to use. What we're here for is to try and zero in on what the Commission is comfortable with, how we can adjust and change to accommodate your needs in the next six months or so in our review, and getting the budget to the Governor's office.

Walker - When we last spoke, and I wasn't familiar then with the process, you advised that in the past you went over priorities. Then some six months later, we would be involved in approving the final budget. Not knowing the form the priorities would have, I am bothered somewhat by the fact that first we look at generalities, then in six months will see the specifics and details. We usually get quite a volume of paper and it is hard to work through it all and feel comfortable with what you're doing. Three of us on the Commission are new and have not been through the process. Utilizing your framework looks fine to me. I propose that at our January meeting we take a day to devote to this subject. Then perhaps we can better understand the priorities, how you get from priorities to details, and what it was last year. I would like to have some projections of what you think it will be next year. Is a day enough time? Do we normally set a portion of the January meeting aside for this subject? **Mott** said it is typically the better part of a day taking four or five hours. Usually, each administrator speaks about some of the details, and takes questions on the priorities and what they mean. At that level, we usually take half a day. If you want more background and understanding of the various programs and how the priorities fit in, we probably need at least a full day. If you break it out, there are eight divisions. Maybe we could even truncate that down into program areas rather than divisions.

Jeff Hagener, Director - When I first came to FWP, I spent 1½ days with each Division. That was a very short course. Then I spent a lot of time with each one of them understanding more details. It may be something in that fashion we could do. We would start with what the budget is now, and then talk about new proposals being considered. Would anticipate the Commission

needing at least a day. It helps me to also have that presentation in going forward with further steps of approval.

Dascher - In the past we've had an early opportunity to commit to our priorities on this. I think a day would be sufficient. We don't necessarily commit to priorities. Instead we tell them what we would like to see done, and they can work it up and tell us whether or not it is possible. **Hagener** said could make an additional day as a work session to go over the budget. Would we be asking in January for some kind of approval? **Mott** said if we could get approval on priorities, that would be good. **Walker** suggested having a work session, the divisions could give an abbreviated presentation of their priorities the second day and then we could do the approval on that second day. **Mott** asked if the Commission wanted to formalize that policy statement? Commissioner Mulligan at our work session mentioned that would be a good thing to formalize. **Tim Mulligan** said his perception is each time there is a changeover in Commissioners, it is confusing as to what the Commission does with the budget. At least starting with a policy statement is good. That doesn't mean a Commission down the road can't revise the policy statement. It might be worthwhile to wait until after the January process when everyone understands the process a little better. **Dascher** thought it was a good idea so that future Commissioners know when they come on what's expected of them as far as the budget. **Walker** said he didn't have any problem with it. The statute seems fairly clear and their job is to follow the statute as well. Senses they will work this policy statement over. Suspect there will be suggestions coming now to make changes that people feel strongly about which will be discussed in January. **Mott** said to prepare for the January meeting will take some form of the white pages in this tabbed document, and get a draft set of priorities to you ahead of time. Would you like to see the various accounts in those charts and graphs that project out into the future the monies we have available? We could go through those and discuss them in January. For the Division presentations, will lay out some detail. **Walker** said that is important for him as well as the source and restraints on the funding. **Mott** said there are many refunding restrictions and it limits the flexibility they have on money management. Maybe for the Division presentations could lay out detail showing by Division the current budget for a two-year period, this fiscal year and the next, and have that detail on the side. Then, for some of the higher level things, we'll plug in things like Cash Balance projection in the License account. Through some assumptions we can project that out further so the Commission can see where we are financially in Parks, the General License account and other main sources. You're projecting two, three or four years in advance, but you have to plan that far ahead. You can alter that trend line based on the assumptions that we agreed to. **Mulligan** said that would be worthwhile as he gets questions from the public and it's helpful to have answers for them.

Mott - There are two people with me today. One is Kelly Gorin, who is the Governor's budget analyst. She's involved with all pieces of our budget and we work with her on a daily basis. She's interested in where the Commission goes on policy decisions. The other person is Gary Hamel, who works on the independent side of the legislative branch. He works with several agency budgets; ours is one. He is involved with analysis and a lot of the legislative committee staff work.

Hagener- Asked for feedback on the FWP Commission Action Sheet, which we also called a "green sheet." Chris Smith sent it out for review of each Commissioner.

All agreed it would be very useful. It will be prepared for each agenda item at the monthly meetings and will serve as a sort of “briefing” memo.

2. Opening - Pledge of Allegiance. **Chairman Walker** Called the meeting to order at 9:00 a.m. and led the Pledge of Allegiance.

3. Commission Minutes for Nov. 8, 2001 meeting - Will do this tomorrow when have had more time to review them.

4. Approval of Commission Expenses, November 2001

***ACTION:** Dascher moved approval of the November 2001 Commission Expenses. Mulligan seconded. Motion carried.*

5. 2002 Commission Calendar - Because the January meeting will be mostly review of the budgetary process, it was agreed to have this meeting as a work session on January 23-24 in Helena. **Don Childress**, Wildlife Division Administrator, said the February meeting dates are critical for them and for the Commission as well because of some legal requirements as far as public notice. **Walker** suggested February 20 & 21 in Helena. **Commissioner Dascher** said April 17 and 18 are the preferred dates for the April meeting, which will be held in Glasgow. The other dates/locations agreed upon are: March 21 in Helena, May 9 in Helena, June 18 and 19 in Helena, July 9 with location to be determined, August 8 in Helena, September 12 at possibly another location, October 3 in Helena, November 14 in Helena, and December 11-12 in Helena.

6. Adoption of Commercial Fishing Regulations - Final - **Chris Hunter**, Fisheries Division Administrator - The first item is adoption of the commercial fishing regulations for Lake Helena, Hauser and Holter reservoirs. It's for the coming year; we discussed it last month. Jim Martin, who does commercial angling in those waters, is here if you have questions. There were no public comments on this proposed adoption.

***ACTION:** Mulligan moved approval of the 2002 Commercial Fishing Regulations on Lake Helena, Hauser and Holter Reservoirs, as proposed by the department. Dascher seconded. There was no public comment. Motion carried.*

7. Fishing Derby Rules - Tentative - **Hunter** presented the tentative fishing derby ARM rule, including public hearing dates, background, rationale for the proposed changes, and application deadlines.

Walker - How about those that are less organized? What kind of transition do you intend to have? **Hunter** said we must make sure we get the word out. We tend to receive the same ones year after year. We'll notify all of the tournament directors after this is adopted so they know. **Walker** mentioned that some are benefit cases. How do we deal with those when they're not planned well in advance? **Hunter** said we would probably look at those on a case-by-case basis. The old rule says we must receive an application at least 180 days prior to the tournament.

We're giving the same amount of time as previously. **Mike Murphy** asked what is the significance of the 180 days? Can it be shortened to take into account some of these cases where they don't know far enough in advance of the tournament? **Hunter** responded that from a planning standpoint, it's nice to have that amount of time, especially if we must provide them with some sort of accommodation. Should something come up with a short time frame, we could probably address that issue. **Mulligan** mentioned that should the department deny an application, they have the right to appeal to the Commission. So 180 days isn't excessive in a case where one is denied and they go through the appeals process. **Hunter** said we should put something in here about emergency situations, and that those are reviewed on a case-by-case basis.

He said they are considering prohibiting contests involving the tagging of fish with prizes awarded for the recapture of the tagged fish. These are contests where a fish is tagged, put back in the water and then the tournament sponsors will take an insurance policy out that no one will catch that fish. They can offer a very large prize. We don't currently have any of these contests in Montana. When we had them in the past, we received a fair amount of public opposition. Since there are none right now, we added this. **Murphy** asked what the primary concern was over that. **Hunter** said he thinks it's an ethical issue because of the very large prizes involved. They get a lot of people at some tournaments because of these contests.

Hunter - Last item is the waiver that "During approved catch-and-release fishing contest hours, fish caught for contest purposes and released alive by contest participants are not considered legally taken." That was something we told walleye and bass folks we would do with the regular regulations. **Mulligan** asked with what we did with the final fishing regulations and not changing the definition of the catch, why do we need to waiver the possession limits? **Hunter** said it is done to make it very clear they are excluded. There is still some confusion about the wording in the regulations. The tournament folks want to be very clear on this. **Mulligan** said what I'm differentiating is we're allowing people to high grade, but they can't take 30 fish off the water. The way this reads, in a tournament they could pack 30 fish to the weigh-in station and then turn them loose again. I personally don't believe they should do that. I think we should give them the latitude to catch and release, and keep the limit, but not to exceed the limit in the bucket or in the live well. If it takes 20 fish to get to the size structure they want, I don't think they should be allowed to take 20 fish and weigh them in in excess of the possession limit. **Dascher** said they're staying within the limit. They catch fish and turn them loose during the day, but they stay within the daily limit. **Mulligan** suggested putting a line in there somewhere saying the daily weigh-in will not exceed the daily possession limit. **Hunter** said that would not work because they will only have five in their live well at a time, but they can go in, have those weighed and go back out. **Dascher** -said she thinks we have to leave it like that. They don't come in with more than the daily limit at any one time, and most, when they come in for the weigh-in, have released all except what they want to weigh in. **Mulligan** said as long as it's clear when someone puts in an application and wants to weigh in 20 fish at a time, they won't be allowed to do it. **Hunter** said when we do a permit, we put conditions on it so we can deal with it that way. So that is what we had proposed. Once we get the thumbs up on this, we take it to the Secretary of State so they can publish it. Then we go through the process. The date for the closure on public comments is February 15. Then I think we can bring back the final to the Commission at your March 21 meeting.

Murphy - Under “prohibited contests,” is there a rationale for prohibition in certain areas? If we look at a definition of what a contest is, if they don’t fall within the definition of a contest with the 30 people or \$500 prize limit, can that still happen on those waters under 400 acres? **Hunter** said the rationale for that is it’s just a small body of water and the potential for conflicts between tournament folks and regular anglers is very high. On your second question, they would still meet the definition of a fishing contest. **Walker** said he believes some communities are doing it with children’s contests and this would interfere with that. **Hagener** said this would only apply to publicly stocked waters. **Murphy** said he still thinks we need some kind of a provision there to allow some flexibility so those organized events can do it in a legal fashion. **Dascher** said if you just take that out, then it would be at the discretion of the department when these come in. So eliminate #3 and when these contest applications come in, whether they’re kids’ fishing contests, seniors’ contests or whatever type on a smaller body of water, address them on a case-by-case basis. **Hunter** said we could use the other criteria to address it. Okay, we’ll take that out.

Walker - I’m looking at #2 on that same paragraph, is the tagging any different than what we do? Is it harmful to the fish? **Hunter** said if we allowed those contests, like we do now, then we can tell them how that will occur. As I mentioned before, the people who have objected to these have done it more on an ethical basis. Some members of the public don’t feel this is a sporting thing to do. **Murphy** said if it’s a contest and there are prizes involved, I can’t see where there’s a distinction. You’re still trying to catch the most fish you can and win the prize. I don’t feel there is an ethical difference between that and other contest activity. **Mulligan** said we have the criteria there where if we have considerable public opposition, you can accomplish the same thing with that line. I think we could leave it out and accomplish it with that other line. If we do have a lot of public opposition, we could deny the application on that basis. **Murphy** asked what criteria the Department uses to determine what is significant public opposition? Has there been any organized group that is categorically opposed to fishing contests? **Hunter** said it is not organized groups; it’s regular anglers who oppose this practice. We’re getting significant opposition now to more tournaments on Fort Peck. In fact, the Fort Peck Management Plan draft puts a limit of 12 per year because the public is getting very frustrated. **Murphy** asked how you make that determination? Is it based on just the numbers or individuals who would complain? **Hunter** said it’s more the numbers and reasons for their opposition. **Dascher** said she doesn’t think there would be a problem with that. There’s a tournament proposed at Ft. Peck and the format that was used there had significant public opposition before and after. After the fish died, they were really upset. I don’t think the department would have any problem if something like that is proposed again. There will be enough comment that the department won’t have any trouble. **Mulligan** said since this is a tentative, we can see what the public says about it.

Larry Peterman, Chief of Operations - Whatever decision the department makes, there is always the avenue of appeal to the Commission if we deny one and they think we’ve judged it wrong.

Dascher - I had mentioned the meeting in the east being in Billings and I didn’t know if you wanted to schedule another meeting in Glasgow. I realize you’ll get more people in Billings than at Glasgow, but there is a fair amount of concern in Glasgow about the fishing tournaments. I

was wondering if it would be possible to have a meeting in Glasgow as I think the Glasgow folks would appreciate having the opportunity to address this issue. **Walker** asked what numbers were you talking about? How many people do you anticipate would be affected? **Dascher** said she was not sure you would get that many in Glasgow, maybe 15-20. **Walker** asked if it was better for 3-4 of us to travel there, or is it easier for them to travel to Billings? **Dascher** said she thought they could go to Billings, or they can write letters or send e-mails on it. **Hunter** said most of the comments they get, like on the fishing regulations, are from e-mails. So we're just asking for your thumbs up to go ahead, take this to the Secretary of State and issue it as a tentative ARM rule change.

ACTION: *Mulligan said this is a department ARM rule so we just do a thumbs-up. Hunter said when it's a final, you'll have to approve it, but for now it's a thumbs-up. Walker said he was satisfied with that; other Commissioners agreed.*

8. Hookham Proposal for New Fishing Access Site in R-3 - Final

Paul Sihler, Field Services Division Administrator - This is a request for final approval for the Hookham Fishing Access Site acquisition. This property is on Big Creek and Sunnybrook Springs by the highway along the Yellowstone River between Livingston and Gardiner in Park County. Arlis Fisk, the daughter of the Hookhams who are now deceased, wants to sell it to the department. They had a strong interest in seeing that their property was maintained, conserved and available for public access. The department completed an EA, put it out for public review, and received three comments. All of the comments were from people in Park County; two were in strong support and one opposed it. The site is currently encumbered by a conservation easement possessed by the Montana Land Reliance, which has been in place since 1999. It prohibits additional development on the site and new parking spaces are not allowed. It also limits how many people can be drawn there. **Murphy** asked if the department can place toilets on the property under the restrictions of the conservation easement. **Sihler** responded the conservation easement prohibits subdivision, surface mining, commercial industrial use, dumps, structures, billboards near roads, mobile homes, and diversion of water from the Sunnybrook spring. So the answer is, "No."

ACTION: *Mulligan - Move to approve Hookham Fishing Access Site purchase. Lane seconded. Walker - Any public comment? None. Motion carried.*

9. Closures for Bynum Reservoir and Bean Lake - Final

Hunter - The last Fisheries item is the final on the closure of Bean Lake and Bynum Reservoir. Both of these waters are very low due to the continuing drought. We are using aeration to keep them open so there is oxygen in the water for the fish through the winter. For the sake of public safety, we are recommending they be closed. Received an e-mail yesterday from Steve Leathe, who is the regional fish manager. He was at Bean Lake yesterday and said 10-20% of the lake was open due to the aeration. It looks then like the aeration is working but it also underscores the need of protection for public safety. He also said the re-opening dates on these were different. Bynum was May 18 and Bean was April 1. In the e-mail he suggested we have April 1 for both of them.

ACTION: *Lane* moved that we go with the department recommendation of the change to April 1 for the opening date on Bynum Reservoir. **Dascher** seconded. No comment from public. **Motion carried.**

10. License Fee Refund for Two-day Fishing License - Tentative

Nancy Kraft, License Bureau Chief - In your review and adoption of the 2003 fishing regulations, you asked for the capability of refunding individuals who purchase the resident two-day fishing license and then later purchase a season fishing license. Today we are giving you a notice of a proposed amendment to our refund rule that will allow this to happen. The amendment is going out today and we will request public comment until February 15. The rule as proposed will be adopted on February 18. This is the initial process for changing our refund policy to allow for the two-day refund.

ACTION: *Walker* - Moved to approve this change as proposed by the department; **Dascher** seconded. No public comment. **Motion carried.**

Dascher - If we voted on this tentative on an ARM rule change, we probably should vote on the fishing derby rule change, too. I **move** to send out the fishing derby contest rules and regulations as a tentative ARM rule change, as amended. **Lane** seconded. No public comment. **Motion carried.**

11. Wayfarers State Park Donation - Tentative

Doug Monger, Parks Division Administrator - Wayfarers State Park immediately adjoins the town of Big Fork along Flathead Lake. Some time ago Eric Myhre approached the department about our interest in accepting his donation of approximately 15 acres, which immediately adjoins Wayfarers State Park. He was willing to sell this property to FWP for approximately \$200,000 though he estimated the value at \$1.2 million. In October he passed away. The Parks Division does not have the money to purchase a property of this value. Community members from Big Fork have put together a package to purchase the Myhre property with the stipulation it be donated to FWP. The department is asking for Commission approval to proceed with an investigation of this donation and, with Commission approval, begin the appraisal, EA process, and work with the local community group.

ACTION: *Murphy* - I've had quite a few discussions with Dan Vincent and others there, and this looks like a good addition to and access for Wayfarers State Park. I **move** to allow FWP to move forward in evaluating and analyzing the donation of this property; **Mulligan** seconded.

Dascher - I see on the map next to the Myhre property what appear to be a lot of homes on the lakeshore. Will that be a problem? **Monger** said he didn't believe it would be. The original entrance to Wayfarers State Park went through the area of those homes. It's a very high density, condominium development. We moved our main entrance to the park out of that condominium corridor and rerouted it. This property is set back from the condominium development and is separated by a public road running through there. **Dascher** asked if there would be access to the

park through the other road coming in. **Monger** said if the parcel ended up with the Big Fork community, they would have access through the condominium-county road. If it became part of the park, it could be accessed through the condominium-county road or through our park entrance road. Most of the access would be by trail foot and bicycle traffic from downtown to the park.

ACTION: *Walker - Any public comment? Being none, all in favor say "aye."* **Motion passed.**

12. Smith River Rule - Final

Monger - Tom Reilly has been discussing this rule with you for the last several meetings and he will do the presentation today. I will be here to answer any questions as I have been involved with the Smith River Rule since its origination.

Jeff Hagener, FWP Director- I'd like to give a brief introduction to this issue. There have been a lot of comments and newspaper articles written about this. In some of those I saw misinformation and things being interpreted inappropriately.

There were allegations about this being a forced directive. That is totally untrue. This issue has been out there for a couple of years. There were discussions over two years ago where some landowners asked about their ability to access, float and utilize the river. There were concerns then from folks who felt this would lead to a lot more commercial use on the river. There was a perception that landowners would be affected by the overall title of the bill, and something in the regulation, which said nothing should restrict a landowner's access to their private property. There was concern over the landowners group requesting an Attorney General opinion. The Attorney General does not do opinions based on a public request. That must come from another government entity. They did request an opinion from a county attorney and the county attorney did render one. I never saw one in writing. He did essentially side with the landowners on that. The landowners group talked to FWP and the Parks Division about it. But it didn't move forward very much.

There were other issues besides the landowner rights issue. When I first came to this position, the landowners group expressed a desire to come talk with me about some of these issues. I wasn't available to do that. They also contacted the Governor's office about meeting with her to discuss the same thing. We had a meeting in May, which was an open meeting. Bob Anez (AP) was there and wrote an article about the landowners coming in to express their concerns. From there, the Governor and I decided we should look at it further. In talking with the Governor and the landowners about it, it was decided other levels in our organizations should be part of the process. We had another meeting at White Sulphur Springs. Commissioner Lane was there, as was the Region 4 Director Mike Aderhold, Tom Reilly of our Parks Division, and a group of landowners. They had five primary issues. One dealt with fire hazards within the canyon and landowners were concerned about their liability should fire occur. Human sanitation, especially pit privies, was another concern. The question there is how long those will be acceptable and when they will become a problem with bacteria getting into the river. Third, there was concern about enforcement on the river. A problem here is there cannot be enforcement presence on the river all the time. There were concerns about trespass. It is not significant, but there has been

some trespass with the public going onto private land. Another concern was with firewood gathering and cutting of trees in some areas. A fourth concern was with river flows that occur on the Smith River. They commonly drop quite significantly over a year in the river. Later in the season it is more difficult to float the river. There have been situations in the past where we make recommendation to folks that they don't float because they will be dragging bottom part of the way. The landowners are concerned about that because there are situations where they must help people out of the river. The fifth issue is over the language in the act. What it actually meant was is there an imposition on landowner rights along the Smith River.

We're working on the first four concerns and made some changes and adjustments. We haven't had many comments on those except mostly positive about some of the fire rings. We're adopting a different method of enforcement to get more enforcement presence there, putting out more signs, making it clearer in the brochures there is limited firewood by the sites, and that it is private land at the sites so there is no authority to go onto private land to collect firewood. Should look at river flow issue in more depth. For many people, the lower the river the more challenge it presents. Developing a sanitation plan to do more regular monitoring. On other rivers in the west, some are more heavily regulated and they have a carry in, carry out waste policy. With the volume of use the Smith River gets, we may look at that in the future.

Landowner use has been allowed in the past and some comments indicated lack of understanding that some rules didn't change but rather were an expansion of what was there before. As a result, the department drafted two or three alternatives, which were brought before the Commission in September as part of the overall Parks fee rule. Because of the issues and questions raised in September, we felt it appropriate to segregate out the Smith River rule.

The department asked the Commissioners who agreed that between September and October they wanted to discuss this with their local constituents. During that time Tom Reilly and Mike Aderhold met with some groups in the Great Falls area giving them more detail of what was going on there. At that time, this was still proposed as a tentative. In October the department came back to the Commission with proposed alternatives. Through that discussion, the alternative now out as a tentative came about. It was put out with full knowledge there needed to be public comment, go through the process, and be brought back here at this meeting. There has been substantial comment.

Other things have come from that which may not be directly pertinent to the issue but have gotten some of the headlines. I want to bring it back to what the issues are here directly. The primary issue is with the landowner use and I know Commissioners Lane and Murphy, who are closest to it, have taken particular interest. They read every comment as late as yesterday, when I gave them another stack of 50 or 60 pages. They have looked at it and I believe will propose some other alternatives.

I emphasize that the issues there were expanded and some people took liberties of thinking they were broader than they are. One had to do with landowner guests with concerns of how far that goes, and if it includes outfitted use, paying customers. From all sides of this I have talked to, there was no intent to make that an expansion of outfitting. They also did not want to expand the

float levels of people who are there. They felt there should be further recognition of them being landowners with access to that property.

We talked about the boat tag issue and why they needed to have a boat tag when they had property immediately adjacent to the river. Part of that is to easily identify the boat and show that the landowner has authorization to be there. As far as maintenance floats for the landowner to control weeds, fix fences, etc., there never was intent from FWP to make that a problem.

I asked Bob Lane to begin process of requesting a direct Attorney General opinion. We all thought we could draft an alternative addressing the concerns from all sides, and let things go on basically in line with what they had. We didn't think we needed an Attorney General opinion. Based on the comments seen, it's an alternative that should be considered. There was discussion that the ad hoc committee was not properly consulted. The ad hoc committee for the Smith River has been in place for some 20 years, it is an advisory committee and that is all it is. We have numerous ad hoc committees around the state and their purpose is a sounding board for the public to get ideas about issues. They were talked to in Great Falls although I don't know how formal the discussion was. The bottom line is there is no requirement to go through that ad hoc committee to come to the Commission. The authority rests with the Commission to make these decisions. It is also the responsibility of the Commission to listen to all groups, regardless of the makeup of the group and what comments they may have. That is what we have done and what has brought us to where we are now. This is not something that is being forced.

Tom Reilly, Parks Division Assistant Administrator - Following the October 12 meeting in Helena, we assembled the tentative rule that is presently out. We sent out press releases. In addition, we sent a copy to the 86 landowners in the Smith River corridor. We also sent it to the people who drew a permit in the original drawing last year. Of those inquiries we sent out, we received 136 comments. Of those, 126 or 93% were opposed, primarily to the landowner floating changes. We received 10 comments, or 7%, supporting the proposed changes. Comments were received from groups or individuals as far west as Kalispell, and as far east as Glendive. Mixed in with the public comments, there were 10 organizations that submitted comments: Magic City Fly Fishers of Billings, Polson Outdoors, Russell Country Sportsmen Assoc. of Great Falls, Flathead Wildlife, Billings Rod and Gun Club, Fishing Outfitters of Montana (FOAM), Montana Wildlife Federation, Madison River Canoe Club of Great Falls, Public Lands Access Assoc., and the Dawson Co. Rod and Gun Club of Glendive. They all opposed the rule as we proposed it.

Some recurring comments: everyone should apply for permits in a single drawing, fire rings are a good idea, how is the half-mile designation picked, who are the members of the Smith River Landowners Assoc., what does word "guests" mean and how can that be changed, and on the maintenance floats some felt it was a good idea and some had other ideas.

Walker - We have lots of comment to deal with now and I want to do that first. As you heard earlier, Commissioners Murphy and Lane have been working on an alternative. I just did receive the new recommendation. We will have some discussion amongst the Commissioners. We need to digest this and we need to make some copies available to you. I believe that the concerns of

all of you have been satisfied. But I believe some flags are out there that people are rallying around that probably shouldn't have been put in the air.

Murphy - After the comments were received, it was apparent there were concerns on both sides of this issue: landowners and river users. Two of the primary concerns were determination of the amount of property a person must own before being able to use the river, and the definition of guests.

Starting with Section K, initially the old proposal applied to those landowners having more than a half-mile of river frontage. Starting with a basic change with #1, the landowners specifically, if you have contiguous land along the river you would qualify under this rule as a landowner. The half-mile provision, then, is struck from here entirely. Going to #3, this says that landowners floating within their contiguous property shall not be required to obtain and display boat tags. However, if the landowner wants to move outside that contiguous boundary, then the landowner will have to comply with Sections J and L of this rule.

In talking about specifics of that access, #7 deals with maintenance and would not require the landowner to have a tag for that landowner maintenance activity (i.e., fixing fence, spraying weeds, etc.) even if they have to put in away from their property to get to where they have to do the maintenance. The next biggest issue deals with guests, and #6 specifically defines that a landowner's guests shall not include those individuals or groups that pay a fee or provide other considerations to a Smith River landowner for the privilege of utilizing an individual landowner's property or facilities. Under #9, that is changed to where at the end of the year FWP shall conduct a landowner survey to record the number of craft, number of floaters and dates of maintenance floats conducted throughout the given floating season.

Looking at Section L, the term guest is referred to in Section 2 and is as defined in Section K, #6. The last one, #8, is new. That is, "Any and all landowner required maintenance floats are allowed for work by the landowner and/or their agents and/or employees without restriction, and will not count against the three landowner floats per day limit." Those are the basic major changes to the existing current proposal.

Reilly - The only two things I can add here is we deleted the table that was between Section K and L with the 20 or 25 landowners we identified last time. Also, in the original Section K, #3, we deleted that with discussion of the local topography, any recreational floats by landowners would have to start and end on their land. If they had to put or take out below, they would be within the Section L provisions.

Mulligan - One item where I need some clarification is I would hope the intent of landowner floats is they do not count against the quotas. **Reilly** said the way it is written now is they do count against the three triggers, and that is traditionally how it has been. It's based on the 1996 Management Plan for the river. They would all count against the quotas, that is, floats both outside and inside the landowner's property. This is not a change as up to this point the numbers have been so low they have not been a factor of putting any of the three indicators over the marks of the Management Plan. **Dascher** asked if the ones within their contiguous boundary count, and have they counted in the past? **Reilly** said, "yes." **Mulligan** asked if they are not

using the facilities, the campgrounds and the launch sites, why are they counted and what are the triggers? **Reilly** said there are three indicators. One is average group size and the standard set in the management plan is no higher average than eight persons per group per month. The second is number of groups in the canyon. The standard is no more than 3 days per float season with 45 or more groups in the canyon. The third trigger is number of floaters in the canyon: no more than 6 days with more than 300 floaters in the canyon. Those have been in the Management Plan since 1996. That has to do with quality floating experience, people not seeing 2,000 people per day on the river; things of that type.

Senator Duane Grimes, SD 20 - Senate District 20 includes all of the affected area. The rules, particularly the draft you just explained to us, encompass the legislative intent in the original Smith River Act. I am a user of the river when I am fortunate enough to be drawn, and I think of that river as the model of river management that Montana would use in the future as the recreational use of other rivers grows. I view this issue as critical to maintaining the integrity of the model and the integrity of the original intent of the legislature, which was not to inhibit necessary landowner rights and access to the river. One thing I would add in this rewritten version is that you may not have considered necessary access to remote portions of the river that could not otherwise be accessed by a landowner. If that is the only way to access a particular part of the property, maybe they will have to be outside those boundaries in order to get to another part of the river. The only alternative would be building and maintaining roads, which has an impact. Some of the original language on putting in or taking out outside of their boundaries was handy from that standpoint. I do like the rewritten version. I think it would be appropriate and within your authority to resolve the issues at this point. I would like to see the management act continue as is. It has worked well for parties on all sides in the past and this maintains that status quo. I do not think you need to raise it to the level of any other political entity. That may result in more discussion and hard feelings.

Reilly - In response to Senator Grimes' concern about the remote sections of the river, I believe remote access is addressed in the maintenance floats where we did not stipulate any restriction on maintenance floats. If people need to float from a point above to get to their weed or fence maintenance, etc., they could do that. I've done some research on the fences on the Smith River. Today there are seven fences across the Smith. I had a discussion with the 4 6666's yesterday, and they are removing their four fences. So there will only be three fences remaining that FWP will maintain.

Robin Cunningham, Fishing and Outfitters Association of Montana - The new, improved version has taken away a lot of ambiguity. Those are positive improvements. Even within the contiguous boundaries, there is still question of number of persons and groups on the river, which can push these threshold limits and may require adjustment. That has been a primary concern from our association all along. Once a plan is in place and it seems to be working over time, to come now with a new user group with uncontrolled use even in short stretches of the river, it can affect other user groups.

Walker - It is my understanding we are not creating a new user group. **Cunningham** responded that he was correct. However, the possibility of increased use by landowners does exist. As I recall, their numbers have not been counted. **Reilly** said they have been counted against the

thresholds. **Walker** said his point is there is no new user group and there is no evidence of increased usage other than speculation. **Cunningham** said that for the short time they have kept records on the amount of landowner use, he was correct. But with changing land ownership, that possibility exists.

Jim McDermid, Madison River Canoe Club, Great Falls - Because the public had the wrong perception of what was put forth, perhaps this is an indication the public process was flawed. Our club objects to the process used originally that bypassed the Smith River ad hoc committee. The committee is made up of large landowners, cabin owners, the floating public, outfitters and public agencies responsible for that river like FWP and the Forest Service. Input from these voluntary advisory groups should be encouraged and not considered as insignificant. I think that is what took place on these tentative rules. As far as the new rules given out today, it is not fair to the public to make a decision on a new draft set of regulations over a five-minute recess. It's not fair to the public process and it's not fair to the constituents that we represent. These new regulations still create or expand special privileges for use of a state-owned public resource. I recommend that it is not imperative that the Commission adopts or changes this policy today. I would like to seek the Attorney General's opinion and then adjust the Smith River management rules at a later date utilizing the full public resource.

Mulligan - With all the input, different interpretations and perceptions of what should or did not happen with the ad hoc committee, I get the message that we need to clarify the role of the ad hoc committee. We need to clarify what that role is and what this Commission wants the ad hoc committee to do in concert with the department so this doesn't happen in the future. My experience with ad hoc committees is that they are not the authority or the go-through from start to finish. Apparently we haven't clarified that. **Hagener** said this ad hoc committee was established by the Regional Supervisor, not by the Commission. Maybe it needs to be. If we redo that, perhaps we should look at who sits on it and add new names. There were some concerns by the landowners groups that a lot of people from the upper end of the Smith River corridor haven't been involved in the ad hoc committee. **Mulligan** said if we decide we want that ad hoc committee to be a first step on proposed tentative rules, that needs to be chartered by this Commission, not by the local Regional Supervisor. In that case, this Commission should establish a process for membership. **Reilly** said in defense of the ad hoc committee, when we originally proposed the first changes of September 6, the changes were so minor and there were no controversial points. They were changes like going from one to three non-immediate family member landowner floats per day, adding the fire rings, and cleaning up a fee differential between child/adult. There was never an effort on my part or anyone else to exclude them, as at that point the proposed changes were not major, significant changes. As we all know, however, they changed into that after September 6.

John Gibson, representing several organizations: Montana Wildlife Federation, Billings Rod and Gun Club, Magic City Fly Fishers, and the Public Land Access Assoc. - All of those groups made comments and the details are in the comment pages you have. My comments today will be general. In Montana we hit capacity on the Smith and it's coming on a number of other rivers and other resources. It's important that we stick with the principle of fair and equitable distribution of opportunities to use these public resources. I'm concerned about the Smith being a very poor model of that. We have at least two conditioned access groups. By that I mean you

must meet another condition, other than the permit process, to float the river. One is that using an outfitter you must pay a fee or you must meet their schedule, or both. Now we have another where you must be a guest, you must be a landowner, you must be a sibling, or something like that. Whenever we do this, we take away from the general public's opportunity to use this river. If you're dealing with a crowded river, sooner or later you have to accept that it's too crowded and another reduction in use comes. No one objects to the idea that landowners ought to be able to float the river to manage their land and manage their livestock, or go down the river to access their property downstream. If you're trying to manage recreation floating on the river, you can't make all of these exceptions to these groups. The more of these use groups we develop, the farther we move away from fair and equitable distribution. On the Smith, there were 4,000 applications and 750 permits issued. I think this model for the Smith is seriously flawed. I ask the Commission not to further erode the opportunity of the general public to use a public resource.

Lance Lovell, Smith River Landowners' Association - The legislature has spoken on the policy that guides this Commission. The landowners' association formed in response to the members' perception that certain folks inside FWP were not going to follow the 1989 Smith River Management Act and the 1996 Smith River Management Plan. The landowners are not a new class. What this amounts to is special interest groups who are more concerned about public access than livelihood and rural economies. I'd like to be on record on behalf of the association echoing the comments of Director Hagener. We did not ask for an expansion of privileges. Don't subject yourself to this kind of abuse and mistreatment at the hands of special interest groups. There are specific rights at stake. We have adjudicated water rights going back the early 1900s. These are vested private rights in your public resource. I encourage the Commission to be skeptical. We issued a letter to the 4 6666's Ranch, which was the lightning rod for this, stating that we do not agree with the requests that it made. We suggested that they get an outfitter license. We have never had support from that group. I hope the Commission can get the people affected by the river the most to talk and resolve problems.

Bill Orsello, Helena Hunters & Anglers - Those people who drew permits saw this change as a negative change. Had you gone to those who did not draw a permit, they may have been even more vocal. Our concern isn't so much with the landowners on the river. We can adjudicate privileges to different groups and that's a reasonable reaction to the public's interest. Landowners provide a lot of opportunity on this river: boat camps, fishing opportunities along their banks, etc.. Our real concern is the difference between rights and privilege. Once a privilege has been adjudicated by the state or by the trustee, it can be taken away. Rights are different. Once you've adjudicated a right, it's difficult to change that right. If these are viewed as privileges the state gives on behalf of the people and there are certain benefits to the public we can ascribe to those privileges, I'm all for it. But if we're talking about rights, if there's a vested property right in a public resource like the river by virtue of proximity of land ownership, I'm against it. I don't believe that would stand up to a legal test and I don't think it's right from the standpoint of the state ascribing a right there. That's the real concern we have. The concern from our standpoint, too, is what drives this and is it an expansion of a privilege and a right? The rule in place now seems to work for number of floats per year. Why are we expanding to such explicit language unless there is a sense this expansion is going to give more rights and fewer privileges?

Mulligan - It is my understanding this Commission cannot give or take away any rights. We do not have that authority. Any actions we take to regulate recreation, fishing or things we have authority on is to give or take away privileges. If there is any connotation that we are giving a right, it is not an accurate connotation.

Tim Benedict, U.S. Forest Service - We want to work with the Commission as a partner in the management of the Smith River. We'd like to work within the process of the ad hoc committee and look at all our public needs in a holistic-type approach. We are, of course, the national forest, and have federal laws, regulations and policies that guide us. We want to be consistent and strive towards that consistency with parallel-type management. We encourage further presence on the Smith River in law enforcement efforts. We're open to public input. We do have a presence on the Smith River.

Jim Voeller, outfitter operating on the Smith River - The amended version of the rule has had a lot of work put into it. I wanted to point out that historically, the landowners had to be present on floats. The potential for increased use must be thought about. In #4 under Section K that says landowners do not have to be present can lead to potential increase in the number of people on the river, and my concern is directly related to how these increased numbers will affect the indicators.

Mulligan - The major difference between the existing rule and what we're doing is the landowner had to be present on the floats in the past, but does not have to be there now. **Reilly** said under the existing fee rule, the landowner had to be on the floats whether within their boundary or outside their boundary. Under our new proposal, the landowner would not have to be on the float within their boundaries, but would have to be outside the boundaries. **Mulligan** said we do not want to add to the load on this river. That was never the intent of this Commission. We do not think it will add a load to this river. Regardless of how people want to interpret what we're doing, giving or taking away rights is not in the authority of this Commission. We cannot do that so it's not a relevant comment. I do need clarification if this issue of not requiring landowners to be present or other things we're doing will add a significant load to this river. **Reilly** said the answer is, we don't know today. The landowner floats have been so minor up to this point. Last year there were 8 or 9, and a total of 47 people the whole season. The year before it was one less or one more than that; there just have not been many. I can't state whether it's because the landowners had to be on the float, or bad water years, or lack of interest. We don't know. **Dascher** asked if landowners have a problem with requirement to be on the boat. **Reilly** said he didn't think so because in previous years that's the only way they could do it. **Dascher** said we probably should stay that way. **Mulligan** said what we're talking about is recognizing privileges to use that river. I feel much more strongly about recognizing a privilege for a landowner because of what they contribute to the opportunities. I feel much stronger toward that than I do providing a privilege for others to do it in the absence of the landowner. **Hagener** said he didn't know if there were strong feelings one way or the other. One of the things that came out about the maintenance floats was that it was clear they don't need the landowner there. **Walker** said that's covered under Section K, #7. **Reilly** said he thinks we have the maintenance floats as a stand-alone issue resolved. **Lane** said his only concern is within their contiguous boundary, what about children out floating on inner tubes?

Does Dad have to be on the boat, or on the tube? **Reilly** said inner tubes are not defined as boats. We didn't on the Big Hole or the Beaverhead. I hope we never reach the point where we're chasing down kids floating 200 yards at Castle Bar asking for their boat tag. **Lane** suggested that if we required the landowner to be present but they were not, then those children would be in violation. **Reilly** said possibly. They're offspring or siblings and should be considered as okay. In my experience, kids on inner tubes and the very short distances they have floated has been such a minor thing on the river that it hasn't been a factor. **Lane** said if this were changed, a landowner or immediate family member would have to be present on that boat. I would like to see the language stay as it is. I don't think it will be a problem and we're speculating that it will be a problem. I would like to adopt it as is for this particular part. **Mulligan** said the landowners aren't asking for it and we've not had any problems in the past, so I think we're better off to stay with the same language as between K and L: use language in L with immediate family members. What worries me is if we end up with one or two trying to take advantage of it and raise the ire of the public, it will reflect on all the landowners and continue this split that has gone on. **Lane** said if the ad hoc committee was revised and more of those people were on the committee, they would self-regulate. If they see the abuses happening, they will address it as they know what the alternative is. **Mulligan** said he didn't recognize that an ad hoc committee even existed. The Commission didn't set it up and didn't understand what their role was. We did drop the ball and I don't want to do it again. **Reilly** said the ad hoc will always be an advisory committee and will bring recommendations to the Commission. They will be working from Commission direction here or proposing new things in the future.

John Kowalski, Helena, PRO Outfitters and member of ad hoc committee - We don't have problems with a lot of this but with agents, guests or assigns, it is tailor made for the 4 6666's Ranch, even though the ranch is not a member of the landowner group. They have a core of six to eight guides who could act as agents. What's to prevent them from putting their three boats or so on the water every day?

Lovell - The issue of assigns and agents came up because of the term "landowner." Many of the landowners and agricultural circles are incorporated now. They operate through stockholders, agents, assigns and employees. We recognize the 4 6666's Ranch issue. We've pledged our support, we've tried to distinguish ourselves from them, and we've pointed out that we are all concerned about this language. To say this rule is tailored for a non-commercial guest ranch is not true. We will self-regulate. We need to get all parties together to talk. We have a lot of common ground and we agree with the sentiments expressed by John Kowalski and those of the department with respect to that type of abuse. Going to the original rule is excluding a group of agrarians and it is wrong.

Reilly - The 4 6666's Ranch is a large facility. It is a guest ranch even though I don't believe they charge fees for staying there. It is for their guests and friends from both in state and out. They do fly fishing along the river. I don't know how many times they apply for floats. If this rule did pass, they could float several times a day and take advantage of that. I don't know that they would, and it's all speculation at this point. **Mulligan** asked if we did put in the limit that the landowner had to be with them, who is the landowner? **Reilly** responded that in this case, it is the Marions, who own the 4 6666's Ranch at the top of the river right below Camp Baker. They have put a new development there of houses and guesthouses. It is totally private. I'm

confident they don't outfit out of there or get a fee, but they do have facilities for a lot of people there at one time.

The Marions are fairly elderly. I understand they are there part of the time. They invite people there when they're not there. That is something we will have to sort out with a landowner as to who the agent will be. In cases like that, oftentimes they will not be there. That is the most obvious example on the Smith River. There could be others.

Lovell - The tax record shows the Marions are part of an entity and they are not the fee title owners. So requiring Mr. or Mrs. Marion or whomever to be there this does not address this issue. This is an entity. The question is: what do you do with an entity?

Walker - Looking at this situation, if the Marions are not the owner, that discussion is not what we are talking about. The owner would be the person, the corporation. We want to guard against someone or a "maybe" that doesn't seem to exist. It is my understanding as we go through this rule-making process, we will deal with similar ones in the future. We can revisit a biennial rule next year if we wish. If there is a problem, we can deal with that problem. If there is not, we could get involved with regulating something that doesn't address the problem. **Reilly** said the previous rule required landowners to be on their floats, whether they were within their property boundary or outside their property. Not requiring landowners to be on a float is a change we made October 12 that went out in the tentative. **Monger** said you have stumbled onto one of the key issues because the 4 6666's Ranch brought up these questions 2½ to 3 years ago and are responsible for the same questions being asked today. While they could not operate within those existing rules 2½ years ago and do what they wanted to do, the questions they posed then are the same ones you are struggling with now. What started this whole issue was that ranch at that location with non-family members on those floats. So this is relevant. **Walker** said so it hinges on the phrase "and/or immediate family members not required to be on the float" and the insertion or deletion of the word "not". **Monger** said that was one of the initial issues that brought us here today and whether or not that ranch could hire a guide and/or assigns to take even family members down that river was part of that issue. Their ranch foreman at the time was a licensed guide. **Lane** said his understanding is that when they made those requests they received letters from the department saying "no" they couldn't do that under the current rules. **Reilly** said they received a reply from the Region 4 office restating the rules as they were written then, which meant the landowner had to be on the float. There was an inquiry, there was a response, and the 4 6666's Ranch didn't pursue it any further. I believe they concentrated their efforts on bank fishing and wade fishing. They didn't go outside the rule, put rafts in the river or do anything else. **Walker** said we've been talking about Sections K and L. We're considering these rules in their entirety, as amended by Sections K and L.

ACTION: Murphy - *I move that we approve these tentative rules with the modifications as presented today within the provisions of K and L as they stand at this point in time. Seconded by Commissioner Lane.*

ACTION: Mulligan - *I cannot support the motion as it is without changing the language back to the landowners required to be on the float. I offer an amendment to that motion for Section K,*

paragraph 4, which requires that a landowner or immediate family member of the landowner be on the float.

ACTION: *Walker* - Going to line 4, paragraph 4, Section K, you can strike the word “not” and it says the same thing. Second by **Dascher**.

Murphy - I still have the question in regard to the 4 6666’s Ranch, whether or not it is a corporation, who is the actual landowner, does this make a difference and does taking the word “not” out make a difference? **Dascher** said if it is a corporation, they probably have a board of directors and they could designate someone to be their agent. **Mulligan** asked if the Commission could use the same landowner definition for hunting and fishing rules. Referring to landowner preference situations and items like that.

Bob Lane, Chief Legal Counsel - Commissioner Mulligan is talking about landowner preference. The way we have dealt with landowner preference is we allow only one preference for each land. We leave it up to each landowner to determine whether it is the landowner, immediate family member or an employee. It is a different situation and we don’t really have a definition of landowner that helps in this situation. There is a difficulty here between a corporate entity or a partnership owning the land and land owned by individuals, even joint tenancy. We could define what a landowner means and give “landowner” some definition. The landowner or the principal manager operating the property, or something of that nature could be defined as the landowner. This could narrow it so we have the equivalent in a corporation where only a designated number of people would count as the landowner. You could adapt this rule and have FWP come back with some options about how to define landowner. I can’t come up with something right now that will solve it without some discussion. You may even want public input into it.

ACTION: *Mulligan* - I amend my motion asking FWP to develop a suggested landowner definition. **Dascher** seconded.

J. Lane - How would the Enforcement people know these are legitimate landowners? **Reilly** said we would be back to where we started today with a chart of landowners identifying those lands that are corporate owned and the designated landowner for each one of those. It would be back to having a list. **Dascher** asked how you determined landowners in the past? **Reilly** said through their contacts and maybe county records, the Region 4 office has kept a database of landowners over the years. **Dascher** asked if this would be any different than that. **Reilly** responded only that we have not gone to identifying corporations. The 4 6666’s Ranch has always been just that. I don’t know what their corporate name is or their board makeup. We’ve always referred to it as the Marions at the 4 6666’s. **Murphy** said looking at #8 under Section K, it says that the landowner may not use the floating opportunities under this section to conduct or allow outfitted floats or to otherwise allow or conduct floats for commercial purposes. If the 4 6666’s Ranch is bringing people in and from whatever perspective or sense this is a commercial-type activity, wouldn’t that be a provision preventing them from doing this? **Reilly** said he doesn’t believe they charge anything for their guests. **Murphy** said for the sake of just this one situation, would like to leave it as it is, let the rule go in, work with them for a couple of years and see if it is a problem. **Walker** said we typically look at commercial purposes as an outfitter-

client relationship. A commercial purpose for a company or a corporation could be an employee perk or a prize or something of a non-personal nature.

B. Lane - It could be and we could define it that way. However, the way this is written it does talk about outfitter floats or commercial purposes. I think it will be hard to have something enforceable unless money changes hands and unless we define it to include other things. That consideration can get fairly attenuated where it's not just a perk, but a business associate where you want to cultivate a good relationship. So the question becomes, how do you define that person as different from a friend? There is some difficulty from an Enforcement viewpoint. When we put this language in here, we were talking about money changing hands. You need to look at how you deal with corporate entities. It's obvious those corporate entities could take advantage of it. If you're concerned about entities other than individuals who are direct owners, we need to think about some definitions for who qualifies.

Walker - I believe we can do that because we've shown our intent is clearly to prevent commercial exploitation beyond the outfitters. We find ourselves at the point where we have a motion, we have a second, we have made an amendment and we have a second to that amendment.

Mulligan - Restated, the amendment is for Section K, #4, to strike the word "not" from the sentence dealing with landowners and immediate family members where it would read: "The landowner and/or immediate family member is required to be on the float." The amendment further requests FWP to put together a suggested definition for "landowner."

ACTION: Walker - All in favor say "aye." Motion carried 3-2. Opposed by Commissioners Murphy and Lane.

ACTION: I'm asking now for a vote on the original Smith River rule, as amended. **Motion carried.**

13. Snowmobile Water Skipping ARM Rules - Tentative

Beate Galda, Enforcement Division Administrator - Gave a presentation on snowmobile water skipping showing video tapes with some background on the subject. The topic here is not snowmobiling. It is about boating on the water with a snow machine and concern these machines are not designed for safe boating. The Commission adopted an emergency rule, which expired on December 7. Public comments were 3-1 in opposition to water skipping on public waters, and concerns were raised about safety and the environment.

Jeff Darrah, Region Two Warden Captain - There were conflicts this past summer on Georgetown Lake, which is a beautiful mountain lake in the Pintlar Mountain Range. Most of the property around the lake is either U.S. Forest Service land or private property. It is the most fished lake for its size in Montana. We have conflicts there now with jet skis, power boats and fishermen. In my opinion, having this event occur will only add to the problems. Safety is my main concern.

Galda - I reviewed the use of private waters in Montana where there were alternatives to using publicly accessible waters. There really is not a statewide survey of that. In Region 1 it is estimated that for two-fifths of the waters outside the wilderness areas and the roadless areas, access is privately controlled. Therefore, any rule by the Commission would not apply to those waters. If the Commission prohibited this activity on public waters, those who want to do this activity could use private waters if they got permission from the landowners. We looked at giving permits for special events. MEPA compliance is one of the issues. Another issue is question of what kind of criteria to establish if we allow the activity, and the third issue is liability.

Given the growing use of Montana's limited public waters for angling, boating and other water-based recreation as well as the growing conflicts between users, the Department recommends that the Commission prohibit the use of snowmobiles on open, publicly accessible waters, except where they need to cross a little bit of water to continue on a trail.

Mulligan - Of the states that do allow the activity, don't they also require the snowmobiles to be "seaworthy?" **Galda** said those states do not allow it, unless they rebuild the snowmobiles. Those are the states I consider to have stopped the sport. **Dascher** said she noticed on the video that they were all highly modified machines made specifically for this activity. **Murphy** asked about the liability issue. In other states where they have established rules to allow this, have there been problems? **Galda** said she hasn't heard of any. Minnesota is the only state that allows this with a permitting system, and they do not seem to have problems. **Walker** asked if we follow the Department recommendation and they went to private waters for the activity, is there a regulation on it? **Galda** said the general watercraft laws of the state come into play, but they don't apply to snowmobiles. Because they're not a watercraft, they would not have to be registered as such. The laws do apply to other boats, however, on waters that are not publicly accessible. **Walker** asked if any regulation applies that has to do with preventing pollution of the waters? **Galda** said, "no." She talked with DEQ the first time around. They did not see pollution as a major issue and did not have a concern with pollution. Whatever decision you make today, this is just the first step in the ARM rule process. If you choose to go ahead with some kind of rule making, it would go to public hearings. Our thinking is the public hearings would probably be appropriate in Great Falls and Anaconda.

ACTION: **Dascher** - Moved to ban snowmobile use on open water in the State of Montana except to cross open water to continue on a trail. Second by **Mulligan**. He asked that private waters not be included. **Galda** - Right. Your authority does not extend to that. Any rules passed by the Commission are only in effect on publicly accessible waters. **Motion passed.**

14. Kootenai Falls Wildlife Management Area - Final

Glenn Erickson, Management Bureau Chief, Wildlife Division - The proposal is to allow this WMA to be open on a year around basis, subject to the standard WMA rules. Those rules state that pets must be on a leash at all times to avoid disturbing wildlife. There was an open house, several people came and discussed the issue, including some with their dogs. The general consensus is to make it even more restrictive than what we had originally proposed. The recommendation is to leave it open for public entry this year and see how it works, post the

WMA rules (among which is to keep pets on a leash), monitor it and see how it works. If it does not work, may have to make it more restrictive. **Walker** said you spoke of the public input being in favor of something more restrictive. What does that mean?

Jim Williams, Region One Wildlife Manager - When we held the open house, we expected the people who like to walk their dogs along the river in that area to show up and express their concerns. Instead, the opposite happened. People are very protective of the bighorn sheep there and they suggested that we only open it to hunters with a license during the season, relative to dogs. Their recommendation for Commission action is to maintain public access year around for now if dogs are kept on a leash. In the past we haven't been able to enforce the rule because technically the WMAs are closed December 1 to May 15. We wanted to publicly declare this open for now, subject to the rules. This area was purchased for bighorn sheep habitat and the primary value is during spring. There are some old orchards there, and when the greenup starts the ewes come down to lamb on the cliffs right above an old road. That's where the people walk. There are two neighbors there who call whenever there's a problem with dogs chasing sheep. It came up at the meeting that some people have taken shots at dogs when they were chasing sheep. We're reminded all the time how difficult it is to enforce, specifically for bighorn sheep.

ACTION: *Murphy moved to accept the recommendation that dogs be kept on a leash in the WMA. Seconded by J. Lane. Motion carried.*

15. Prairie Dog Plan, ARM Amendment, and Annual Rule - Information

Heidi Youmans, Small Game Bureau Chief, Wildlife Division summarized the two-tiered prairie dog planning process, the Montana Prairie Dog Working Group, the goals and objectives of the plan, and plan implementation, including HB 492, the ARM Rule and the one-year Annual Rule on shooting regulations.

We enclosed a summary of the public comments. About 500 individuals and entities were engaged in the public participation process. We had four hearings as well as a written comment period. The comments were highly polarized and probably the most highly polarized of any public comment I've looked at.

After presenting the plan to you, and talking about the ARM Rule and the Annual Rule that would come after approval of the plan, we would request the Commission's tentative concurrence with the prairie dog conservation plan with the understanding that, if it is adopted, these are two steps to come after it is adopted. Your final decision, then, wouldn't happen until next month. At that time we would go through in more detail the proposed ARM amendment and the Annual Rule.

Dascher - In the ARM Rule in #2, should it read "Commission" instead of "Department"? **Youmans** said this is a peculiarity of the statute. Unlike the statutes that deal with game species, this statute dealing with nongame wildlife species gives the authority for those regulations to the Department rather than the Commission. Because this is a policy matter, and it is a controversial matter, the public wanted the Commission involved and to have a hand in this. That is why we

are asking for Commission concurrence. If the Commission concurs with our proposal, then we would go ahead with it. **Dascher** said the only way she would go along with it is if the Commission has regulatory authority over shooting of the prairie dogs. She understands the Department managing the plan, but if we're going to have shooting as a hunting season, it should fall under Commission authority to set and regulate that. **Mulligan** said we have two conflicting statutes. One says the Commission sets hunting seasons and this new one for prairie dogs says the Department will do it. My recommendation is not to do this. **Childress** said the language that is referred to in the ARM Rule is by statute. Unless we change the statute, which could be looked at in the future, as a Department we must make that decision. It does not mean, however, that the Commission cannot also be part of that decision-making process. The Commission is the body that provides an opportunity for the public to deal with decisions the Department would be involved in, and I think that is why we've chosen this process to go about it. **Dascher** said on page 12 of your plan, it states that management regulations for prairie dogs will be established by the FWP Commission and public review in the same manner as other annual rules are established. So if it is stated in the plan, why can we not have it stated in the ARM Rule? I think we need to include it in the ARM Rule, and only for the shooting portion of it if there is what it takes. **Childress** said here I will ask our Legal staff if the decision-making could be broadened through the ARM Rule process.

B. Lane - An interesting thing happened when the Department and Commission met to discuss how we proceed on various issues and what the Commission's authority was. We came up with nongame species and it seemed logical that the Commission should have a role in that. When we looked at the statutes, we realized there is not only the nongame statute where the Department adopts the rules, but another statute that says the Commission adopts policies for the management of nongame. So we have two statutes giving authority to two different related entities, one the Commission and one the Department. What we and Don Childress have been saying is what it needs to comply with both was the Department and the Commission would be jointly adopting these regulations. By doing it that way, you would have control as the Commission over this because they wouldn't be regulations unless you adopt them. **Dascher** said in the ARM Rule it is not stated that way. **B. Lane** said that quite frankly, they started out the ARM Rule before they had their meeting and looked more closely at the statutes. So they will have to restate that in the final version to make it clear that they are jointly adopting them. He said he thinks they can make this correction when they do the final adoption so it is clear and they recognize both of the statutes and both authorities. **Childress** said the proposed ARM Rule is already out that they went through the process. It will be a clarification in the final adoption of the rule. **B. Lane** said in any of the shooting regulations or others they would make it clear that it needs to be adopted jointly. It will be in the ARM Rule. It is not there right now because they did not think it through. Had a good discussion about the authorities when Commissioner Mulligan brought it up, and realized they had dual authority there.

Youmans - We will fix this oversight in the plan as well in order to reflect that. **Mulligan** asked where in the plan do we talk about funding? **Youmans** said there wasn't a lot of attention to that in this plan because it is an ongoing process. The last statewide survey we did in the mid-1990s was contracted out and it cost close to \$70,000. At the same time BLM and CMR were doing certain things and through the auspices of this working group, we cost-shared all the work that has been done. So FWP has assumed a portion of it. We're constrained in terms of dollars that

can be used for this sort of activity until something changes. We had some hopes on CARA legislation, so there may be some funding coming down from Congress that would help with this. We're also trying to keep monitoring and other management activities at levels they have been in the past so we wouldn't be looking at huge new expenses over and above our ongoing expenses. **Dascher** said her understanding of this, number-wise, is that we don't have a problem in Montana. If the state can come up with this plan, show that our prairie dog population is healthy and we have a plan in place to protect them, if the federal government goes ahead sometime in the future and lists the prairie dog, can Montana be exempt? **Youmans** said that hasn't happened in the past. It's either all or nothing; all the states within their range or not. The USFWS has come under heavy criticism for that. There have been some indications for wolf and other species they might delist by state or by geographic area. **Hagener** said they have the authority to do that now. **Mulligan** asked with what is proposed in this plan and the ARM Rule, how much additional work is needed by the Department? **Youmans** said it could depend on how we decide to monitor, and how many partners we have. If we use some sort of remote sensing, it could be more expensive than doing groundwork, or it could even be less. We're still investigating the most cost effective and accurate way to do that. The other expense will be in the regions when we step down this planning process to develop regional goals and objectives. **Childress** said there are efforts now looking at ways to gather funding to help address some of those issues across the range and not just in Montana. It's part of the multi-state process recognizing that ultimately that has to happen for plans to be effective. We have not committed a large amount of additional money to the plan implementation at this point. We will have opportunities to look at other funding sources. There is some opportunity with CARA as we move forward. **Mulligan** said he does not want the Department saying it will do something and then cannot because of lack of funding, which the public doesn't understand. **Youmans** said the controversy comes more with the shooting regulations. We put out hundreds of copies of the plan and didn't get nearly the comment we expected because it is so general. People find things that concern them when they are tangible, like the shooting regulations.

Hagener - You might mention how the primary signatories came about, their involvement and how they fit in with the plan. **Youmans** said this is a state plan and on page 1 is a signature page with the directors of the three state agencies, FWP, DNRC and Agriculture. Once we have Commission concurrence, these three would sign off on the plan. **Hagener** said he visited with Director Peck of the Dept. of Agriculture and Director Clinch of DNRC, and both have been positive. They are taking the opportunity until January to talk to their constituents. It looks positive at this point. They don't have concerns with it but they wanted one more opportunity to hear from their constituents. **Youmans** said all of the other managers here (BLM, Forest Service, BIA, BOR, NRCS and USFWS) have participants in the prairie dog working group and those participants have kept them apprised of what is happening. They have provided input to areas where modification or clarification is needed from their director's point of view. There has been a lot of give and take already in the process, so we expect smooth sailing. **Walker** asked if he understood we are not including the numbers from the reservations in Montana. **Youmans** said the reason for that is we don't have authority over management of any species on tribal lands unless we develop some sort of cooperative agreement. The tribes have their own group working on prairie dog conservation. All of the tribes within the 11-state area are meeting and coordinating their efforts to put together prairie dog conservation plans. They would consider their interactions with USFWS government-to-government arrangement. Meanwhile, they

participate in the state working group and there is a lot of communication. They are adamant, however, that they should not be part of a state plan. **Walker** asked as we work towards achieving goals on distribution, do we use their numbers? **Youmans** said we are not. In this plan, we referred to the current total acreage, including tribal land. Some tribal acreage is referred to in the table, but they are not included in our goals. We took them out. There is concern about that, because once we took the tribal acreage out of our goals, it looked smaller. **Mulligan** asked if by doing that, then is part of our objective to increase acreage by 25,000 to 30,000 acres to make up for it? **Youmans** said, no, not to make up for tribal acreage. If we included tribal acreage, we would have increased the same degree to get to that 1988 level. It's proportional. **J. Lane** asked if the tribal plan was far enough along to know whether it is in alignment with what we're doing in the multi-state plan? **Youmans** said, no, but in communicating with them, all indications are that they are working in the same direction. There is a new tribal coordinator, Tim Bosberg, who used to be the prairie dog person at Ft. Belknap. **Dascher** asked if the prairie dog were to be listed, would that apply to the tribal lands? **Youmans** said, yes, it applies to all lands within the state. In terms of the listing timeline, because it is warranted but precluded, we have all indications there is an 8 to 10 year period before prairie dogs would come up again as a priority. We also have signals that if the states do certain things, USFWS would be relieved to put this behind them.

Gary Marbut, President of Montana Shooting Sports Assoc. - Our chief concern has to do with the shooting regulations. That concern is kind of a distillation of the whole process. We see the process focusing down to the final impact, which will be regulating only prairie dog shooters. While we do not object to the prairie dog conservation plan, there will be pressure to fund the activities described under the plan and there will be other things put aside for this. It's a pretty aggressive plan and will be a drain on the department.

I want to look at some of the presumptions that are the basis for everything the department is doing. If FWP doesn't regulate prairie dogs and, as a result, regulate prairie dog hunters, USFWS will declare them a threatened or endangered species. Then FWP, the people of Montana, and landowners will lose all control over them, and we will all lose in a big way. My information is that this is a hoax, there are 10 million prairie dogs between Mexico and Canada in 11 states, and if USFWS did list them and someone brought legal action to challenge that, it would not last a day in court. I think it is unrealistic that the USFWS could get away with listing 10 million creatures as endangered. I'm here because I challenge that assumption and think that you should challenge it as well.

Another assumption, which is at the bottom of all this, is that shooting prairie dogs has a long-term negative impact on their population. But those familiar with shooting prairie dogs know you have fewer prairie dogs for about three months and then they are right back where they were. They breed very prolifically. The only things that limit their population are habitat, food and plague. I challenge that assumption that shooting prairie dogs has any significant effect on the population. However, where all this points to is we need to get a handle on this prairie dog shooting because that is how we can save the prairie dog. I don't think that is true. I think it is good to show the federal government we are doing something and it is good to say to the environmentalists we are championing this all along. But I don't think it is going to have any effect on the prairie dog populations.

What has confused me about the prairie dog working group all along is whether it is a public activity associated with FWP, or whether it is a private effort. My understanding is that it was an organization gathered together by the National Wildlife Federation. Looking at the roster of the prairie dog working group, I see it is made up almost entirely of representatives of environmental groups and governmental agencies. There are two media people on it and a few landowners. There are no prairie dog hunters on this group. There really isn't anyone on this working group to speak to prairie dog hunters. Notices were not posted in advance of their meetings. There were no rules about who could sit at the table, who could vote, and who could make the decisions. I really have concerns about this prairie dog working group and how it is the origin of the conservation plan and the proposed regulations of prairie dog hunters who were not a part of it. We asked if other alternatives were allowed and were told there was only one alternative, which is the regulation of prairie dog hunters.

The pace at which this has happened also frustrates us. You may know we have filed a lawsuit against BLM because of their arbitrary closure of 30,000 acres in Phillips County to the use and discharge of firearms in public lands. They did that to protect prairie dogs so they could put ferrets in there, and ferrets, of course, are the bottom line for all of this. They believe they will not last very long in this lawsuit with this closure in Phillips County, so they want these regulations in effect to accomplish the same purpose before the federal court decides on that lawsuit. I think that is why this is all being pushed at such a rapid pace. It all seems to me to be quite rushed.

This whole thing should go back about two steps and people with competing interests should be allowed to have as much voice as the prairie dog working group, which is a private activity of the environmentalists and all the government employees working on it. It is not representative of the broad spectrum of the people of Montana. I'd like to see this whole business of regulations go back to the public process.

Sterling Miller, wildlife biologist with National Wildlife Federation (NWF) - The NWF was the author of the petition to list the prairie dogs as a threatened species under the Endangered Species Act, and I was one of the authors of that petition. The USFWS found the species was warranted for listing. They published an extensive 12-month finding, which concurred with our petition. There are five criteria the USFWS has to consider when it reviews a listing petition and it found that there were significant causes for concern for all five of those criteria.

Montana is well in advance of most of the other states in prairie dogs research. The NWF was reluctant to file the petition. The NWF, which is the nation's largest conservation organization, has never before in its history filed a petition to list a species under the Endangered Species Act. We did it because we thought that the obstacles to try to reverse the downward trends in prairie dogs were insurmountable by any means other than employing the Endangered Species Act. We welcomed the decision by the USFWS that found our petition to be warranted but precluded. We welcomed that because it gives the states time to come up with management plans to address the problems facing prairie dogs, short of a listing. If that can be accomplished, we would be most pleased because we believe the states are in the best place to conduct management of all kinds of wildlife species. Therefore, we have not challenged the USFWS finding of warranted

but precluded and we will not as long as the states continue to make progress as they have. All 11 states are now well along in the process of developing prairie dog management plans.

The issue that is immediate before you is the question of the Administrative Rule change. One of the criteria the USFWS has to judge is adequate regulatory mechanisms. What we are looking at here is an Administrative Rule designed to address that specific criteria. I went before the Montana legislature along with the Farm Bureau, the Montana Stockgrowers' Assoc., the Montana Wildlife Federation, and other environmental groups. This particular change allowing the department to manage prairie dogs as a nongame species in need of management was a unanimous recommendation of all the groups I mentioned. It was also supported by DNRC, Department of Agriculture and the BLM. They all testified in favor of HB 492.

Walker - Do you know of any prairie dog shooters who are members of this group? **Youmans** said some of the landowners do some shooting and there is some outfitted shooting. We encouraged prairie dog shooters to attend the workshop in Lewistown and encouraged them to join the group. They all seemed to be busy with other things. All along, the group would have liked to have prairie dog shooters involved. It's a time issue, I think. **Dascher** said it was her understanding the group was open to the public because she checked on several and they were open to the public. **Childress** said that concludes our presentation on prairie dogs. We would like the Commission's concurrence to move forward. If that is granted, we will bring it back in January as a final action item by the Commission in terms of the plan and the rule. Once the final action is in place, it will be up to us to continue through the process of finalizing the ARM Rule and the Annual Rule. **Walker** said the Annual Rule, then, will allow participation that some of our members are concerned about. I would advise you move forward.

ACTION: *Mulligan moved approval of the tentative ARM Rule and prairie dog conservation plan. Seconded by Dascher. Motion carried.*

16. Game Damage Season Permit Quotas – Tentative

Childress - These permits are not the only ones available; these are for use in addition to the ones in the normal process. We are asking the Commission to tentatively approve the numbers for the regions.

The proposed game damage season permits/license authorization for the 2002 license year are indicated below by region and by species:

Region	Deer	Elk	Antelope
1	50	25	0
2	200	300	0
3	700	500	50
4	750	500	300
5	700	150	50
6	2500	50	100
7	2500	25	500

The Commission asked to be advised when the department implements hunts as authorized by the Montana legislature.

ACTION: *Dasher moved to accept the game damage season permits for the 2002 license year as presented by the Department. Walker seconded.*

Walker - Is there comment from the audience?

Mark Kambich, Divide - For the antlerless program, it is not enough. Our ranch is surrounded by hunting districts 331, 340 and 319. Our problem is with the mule deer. I would encourage you to increase your antlerless permits during the regular hunting season but also increase the game damage permits. Elk are the same way. We run a summer ranch at the upper edge of HD 319. It's a migrating area for elk. We're seeing more elk and instead of migrating they're staying on the place. It's all cows and we need to get rid of some of them.

Walker - Do you need to be contacted regarding a damage hunt? **Kambich** said it depends on how much the permit quota is increased during the regular season. **Walker** said there won't be a regular season for about a year. **Kambich** said fall is when they have problems on their ranch. Right before hunting season there were 150 head there. They let any hunter on the property as long as they ask and stay within the travel restrictions. Believes the hunters took 11 bucks and 1 doe off the field. **Dascher** asked if his neighbors opened up for hunting as he does. **Kambich** said it's pretty much open. **Joel Peterson** said in HD 331 they are recommending an increase to 150 from 25 now. In several other districts they are looking at those kinds of increases. Agree with Mr. Kambich that mule deer are making a significant rebound. Won't set the final quotas until August. If interested in a game damage hunt, get in touch with Gary Hammond in Dillon, or Craig Fager. **Mulligan** asked if they're coming in before hunting season. **Kambich** said they're coming before but would be happy with the hunting season. They are easier to get the first week. The mountain they're on is about 400 acres and they control probably 3/4^{ths} of that mountain. **Mulligan** said he talked with Gary Hammond about it yesterday and if not getting the harvest they need, there is no problem going with a game damage hunt with the A7 tags. If you're still having problems, get in touch with Gary Hammond or Commissioner Mulligan. This has been a tough year and not getting a harvest in many areas. **Kambich** asked if 500 elk tags will be enough. **Mulligan** said 500 is above any antlerless tags that have not been filled. Can go to those with A7 tags for the district who haven't filled them. Next step is regular cow tags. So there is potential for a considerably larger number than the 500 that can be used early and late.

Pat Descheemaeker, Lewistown - Have a big ranch in HDs 411 and 412. They have had similar problems with large mule deer numbers. They have a fee hunting thing to try to manage the bucks but they let anyone in the community come in for does. Only shot two mule deer does off their place this year. His brother lives on the other side in HD 412. They cannot shoot a mule deer doe on that side of the highway with a doe tag and they probably have 350-500 mule deer on that place. Would like to see close to 1,200 deer tags in Region 4.

Debby Barrett, State Representative from District 34 and landowner in Region 3 - The elk numbers are way high in this area. In the elk plan, read that 90,000 elk is considered sustainable for the Montana plan. With more and more damage hunts every year to address this situation,

what is your idea of sustainable with the damage going up? Would it help to change the objectives? **Walker** said the 90,000 number did not anticipate several straight drought years. A lot of things are not working in favor of the department and trying to deal with it. Makes it hard to answer her question. **Barrett** said that in a performance audit for FWP weather was supposed to be a factor. She has been trying to bring it to the attention of this Commission since August when the quotas were set, but the drought has not been addressed in the management plan. Said the Department's response was they did not need to address the drought as it was the Commission's authority to act in any emergency. **Mulligan** said the Department has been tasked to look at the elk management plan statewide. Haven't set a firm schedule, but his perception is it will happen next year. **Childress** said in the discussion tomorrow there are proposed changes in season structures to help address some of the issues being brought out today.

CONTINUATION OF ACTION: Motion carried.

17. Spring Turkey Season and Quotas - Tentative

Glenn Erickson, Wildlife Division Management Bureau Chief - There aren't many changes in the spring turkey, but on the second page under "restriction," a statement has been added which is an MCA law statute, "It is unlawful for anyone to hunt or attempt to hunt any game bird by aid or with use of any set gun, jack light, spotlight or other artificial light, trap, snare or bait, MCA 87-3-101." The other words there were in the previous spring turkey regulations about baiting. This was added just to clarify what the statutes say about baiting and the use of grain and other things to attract birds when you're hunting. It's illegal and we need to restate that here. It doesn't take any action of the Commission because it's just a restatement of the law, but I wanted to point out that that change is going to be enacted for this next year.

The second one, a change, is under the general hunting regulations, general areas, which adds Flathead Valley. The proposal for the Flathead Valley is to open it up to a general spring turkey hunt for gobblers. The next change is under Sanders, Lake and Lincoln Counties. The spring and fall harvests of turkeys in Lincoln County are relatively uniform and the boundary separating the two portions in Lincoln County has proven to be unnecessary.

There was a late recommendation from Region 3 that was not included in the package you were sent. Region 3 recommends going from 10 special spring male turkey permits to 20. A portion of Region 3 is referred to as Administrative Region 3. Prior to now, there hasn't been much awareness that east of a portion of the Shields Valley and around Livingston is really in Region 5 if you look at the deer/elk map. So these permits in Region 3 were valid in that area before but few people knew about it. We want to get more hunters into that portion of Region 3 where we're receiving landowner complaints. **Mulligan** said he talked to Joel Peterson about going from 10 to 20 special spring male turkey permits and supports this proposal. He feels if the pressure takes place in areas where the hunters know there are turkeys, it's private land regulated by the landowners, then they're not concerned with over-harvest of the turkeys. The only concern is there may be a need to direct hunters to that eastern portion so we don't have frustrated hunters around Whitehall and Boulder who can't get access.

ACTION: *Mulligan moved approval of the tentative spring turkey seasons and quotas as proposed and amended by the department. Seconded by Murphy.*

Andrew McKean, State President, National Wild Turkey Federation - We also support the recommended changes. We are hoping to get more turkeys in Region 3 and elsewhere in the state. As to the Flathead Valley general tag opportunity, it is an issue we've been aware of, and there has been a lot of support locally for it. The hunter survey that FWP and especially Jim Williams in Region 1 commissioned allayed a lot of concerns we had on the state level about access. There was the possibility there could be an influx of western Montana turkey hunters who, being unsuccessful in drawing a permit, would hunt on their general tag in eastern Montana. We were concerned about creation of a dangerous two days on the opening weekend. Based on that survey, we don't feel this will be a problem. The National Wild Turkey Federation, along with FWP, intends to do a pretty intensive public education program with print and broadcast public service announcements to raise the issue of being careful in the woods. We have always appreciated seeing the defensive turkey hunting tactics in the hunting regulations.

ACTION: *Motion carried.*

18. Bighorn Sheep Transplant Priorities – Final

Erickson said they are proposing to trap nearly 100 bighorn sheep in three locations. There are two locations within Montana already approved to receive sheep augmentations. One is in the Highlands of HD 340 and one is the Tendoy's area of HD 315. We could put all the sheep in those two areas. However, we could end up with more to put somewhere else. We'd like to provide some of the sheep to an adjacent state or other states that have requested them, which are Colorado, Washington, Oregon, Idaho, Nebraska, Nevada, South Dakota and Utah. Requests we've had the longest (since 1996) are from Utah and Oregon. The proposal you have a copy of, the Hells Canyon area, is a very large area. The other site is in Desolation Canyon along the Green River in Utah.

What we're asking the Commission is for priority on which state gets the sheep. We may catch enough sheep to fill each state's request, but in case we don't, we need some priority for the requests. In order to give sheep to another state, the Commission must give approval. At this point it looks like we will have more bighorn available than we have sites set up for, so we would like to honor at least one other state. **Dascher** asked how many sheep they will attempt to catch. **Erickson** said about 100 and around 50 would go into the 2 sites in Montana. **Dascher** asked how many would be needed in each state. **Erickson** said they probably will not have enough for more than one state because they will be moved some distance. There is always the possibility of mortalities. They look at 20 to 25 going into the other states as a minimum. **Mulligan** asked about the Greenhorn transplant where they will probably act on it in January. If it were approved, when would they be ready? **Erickson** said that in the Decision Notice they stated they wouldn't do it until next year. **Mulligan** asked if taking this many out this year, would it affect the numbers for next year? **Erickson** said it shouldn't as they expect to have sufficient sheep, and if not this year, then next year. **Walker** asked if there is any sort of reciprocity on this. **Erickson** said those two states would give us any thing we want. **Hagener** said he had a copy of a letter from the Governor of Utah to Governor Martz and he says he is

very enthused about Utah being considered. In the letter they state they are willing to help pay for capture costs and would send personnel to assist with the capture. **Walker** asked if there was a population of sheep one state or another might have that would be more desirable for one of our plants that we could do a swap with. **Erickson** responded "Not really." He said we probably have the most extensive variety of habitats of any state and have bighorn surviving in every habitat type in Montana. It's too late to do this, but a few years ago the California bighorn, assumed to be somewhat similar to the audubon sheep along the Missouri River, was considered because a lot of states were putting California bighorn along river environments. However, once you have Rocky Mountain bighorn in the river breaks you can't have California bighorn there unless you have a physical or topographical barrier to prevent them from breeding. If we have a site we'd like to put sheep into in the future where it is important to get them going right away and we don't have sufficient numbers in Montana to trap and move, then we could request from another state. One factor is that we have provided Oregon and Idaho some in the past, whereas Utah we have not. Another factor might be that Oregon and Idaho habitats are similar to Montana. We're looking for a motion telling us which state has priority.

ACTION: *Walker moved that the available sheep be sent to Utah. Dascher seconded.*

Murphy - From the standpoint of the existing herds in Montana, before we ship sheep out of state, are we able to deal with those areas where there were die-offs? **Erickson** said, "Yes, we believe so." The problem with die-offs is that, based on research done, you don't want to transplant sheep into those areas right away. There is usually at least a three-year waiting period because of the chance of disease transmission. We also have look hard at the cause or habitat features of the areas that had the die-offs. Until the full evaluation is made, it's probably not beneficial to put sheep there until we know the cause of the die-offs. For the most part, in areas that had the die-offs we were able to transplant and the populations have come back. **Hagener** asked if a problem with the die-offs was the larger the build-up of sheep, the more likely to have a die-off and so it is necessary to bring down the numbers. **Erickson** said that is true, and their priority is to transplant them to new areas. In the Breaks population, they are controlling the numbers with increased permits as well as transplants. They think that population is at capacity.

ACTION: *Walker called for a vote on the motion. Motion carried.*

Meeting adjourned at 5:05 p.m.

Meeting on Fri., December 14, 2001

Dan Walker, Chairman, opened the meeting at 8:00 a.m. Will start with the tentatives for Wildlife.

19. Deer, Elk and Antelope Seasons and Regulations - Tentative

GENERAL REGULATIONS

Glenn Erickson, Management Bureau Chief - The first item is a proposal to change the archery equipment restrictions to allow qualified persons with a disability to use specially manufactured archery equipment during the archery season, which the Montana Bowhunters

Assoc. asked FWP to consider for 2002. The department recommendation is to establish a "Modified Archer's Permit" for persons with a disability to allow a qualified applicant to be exempt from the current archery equipment regulations. The person would be required to meet the criteria which the MBA has suggested and submit to FWP a completed certification signed by a licensed physician similar to what is required for a person to obtain a "Permit to Hunt From a Vehicle." The department recommends the criteria selected meet with the approval of Access Montana Outdoors, Inc., an organization established to work on issues related to physically challenged sports persons in Montana. The "Modified Archer's Permit" would allow a person with a disability to use archery tackle that supports the bow, and draws, holds, and releases the string to accommodate the individual disability (arrows are not exempt, and would still need to meet current requirements for archery-only season). With those words, we believe crossbows would be eliminated from consideration for this proposal. What would be allowed is modification of archery equipment that is already manufactured. Also, the "Modified Archer's Permit" holder must have a companion with them to assist in the aspects of the hunt. The companion may also assist the permit holder while hunting, the companion using legal archery equipment, and help retrieve a wounded game animal. Those are the proposal items.

Walker - I would like to hear from those who came to talk about the archery. I particularly want to hear from the Access Montana Outdoors people as they seem to have the expertise in the area.

Kent Brown, Montana Bowhunters Assoc. - Glenn Erickson summarized it very well. We started working on this last year when the issue came up and after last year's tentative session. Intent was to provide access for those unable to use archery equipment under the current regulations. These draw-lock devices should allow people to overcome their disabilities. Appreciate opportunity to come here and present this. Expect Scott Birkenbuhl of Access Montana Outdoors to be here later.

Erickson - The next item is hunter orange issue with archery. There is a statute that exempts archery hunters from wearing hunter orange during archery season. The issue we have is there are areas in the state where we have allowed the use of elk permits, or in some cases Deer B licenses, before the general season. Some of those start September 1. Those that overlap the archery season do so in areas that are primarily private land. About 11 districts under elk have an overlapping rifle season. Keep in mind that not only is this for deer and elk, but black bear moose, sheep and goat seasons overlap archery. In looking at the safety issues, we reviewed this with our legal counsel. We noted that in 1996 we had the regulation that you see listed before you in the regulations. We pulled it out at that time and it's not clear just why we did that. On further review with our legal counsel, they felt we could require hunter orange because it's no longer an archery-only season where we have the overlapping seasons. Since it's not an archery-only season as stated in the statute, we can require hunter orange where it's a safety issue. We are proposing to put this regulation back into the general regulations requiring bowhunters that are pursuing deer, elk or antelope during the archery season to wear hunter orange when there is a concurrent firearm season, rifle, shotgun, muzzleloader, handgun, for the same species. That restricts it down where if you're hunting deer and there's an overlapping deer season that is a rifle season, you would have to wear hunter orange. Same thing for elk. But if there's an elk one overlapping the deer, you would not. As I mentioned, there are 11 elk districts, and 10 had it restricted to outside the national forest boundary, or portions of the district outside the national

forest boundary, or private land. The majority of those elk districts had the restriction to private land.

In looking at deer, there are about five or six districts that overlap. All of those in the areas that overlap are on private land. The exception is HD 260 that has the muzzleloader/archery season beginning October 15. The issues relate to private land where overlap occurs (exceptions HD 445 and HD 260). The main archery season that runs from early September to mid-October doesn't have an overlap. But the rest of it would. If we went any further with this, we would have to look at not starting those rifle seasons as early as they do. The problem with that is all of them are set up to address private land issues, harassing elk off the bottom lands, etc. That, however, would be difficult because of the private land involved. The ones I'm talking about are those starting September 1, mid-September, October 1.

Walker - Does the orange camouflage clothing that I have seen meet the 400-inch requirement?

Mark Earnhardt, Law Enforcement Program Manager - If it's a vest and a hat and it's more orange than black, then it will probably meet the requirement. If it's some other color and the orange is behind that color, then probably not. That seems to work well for a rule of thumb. Most of the patterns have more orange than black, and it hasn't been a problem. **Walker** asked: Does that material work? Does it provide camouflage? **Erickson** said he didn't know.

Mark Baker, Montana Bowhunters Assoc. - Most of the potential for problems is eliminated with the boundary descriptions. In those instances where there could be problems, they have expressed a desire to let us know about them. Probably the best way to deal with that is at the local level where the archers and biologists in that situation can recognize what the problem is, look at their objectives, and hammer out a solution. Thanked department for working with MBA on it.

Erickson - With the muzzleloader/shotgun issue, this is just a clarification of types of muzzleloaders and handguns that can be used. It only applies to those areas where it specifically states an archery, muzzleloader, or traditional handgun season. It doesn't apply to the general season if you're using a muzzleloader or handgun. That's the change there.

In the Region 3 antler picking issue, that relates to the game ranges of the Porcupine or Gallatin, Dome Mountain, Bear Creek and Wall Creek areas. What the region proposes there is to open May 1 instead of May 15 like all our other WMAs. The May 1 opening date is intended to move elk off of the lower foothill pasture areas and help with the game damage issues early in the season, particularly in early spring.

Those are the recommendations on the general regulations. **Mulligan** asked if the surrounding landowners supported this antler picking. **Joel Peterson**, Region 3 Wildlife Manager, said that with the exception of Richard Kinkie at Dome Mountain, it is an ongoing problem. The idea started at Dome Mountain next to Yellowstone National Park as there are several thousand elk there. With green-up in early spring down on Kinkie's pastures, the elk congregate there. It's an attempt to nudge the elk back sooner and maybe alleviate his game damage problem. Then we recognized there are similar problems at Wall Creek, for example, on the Kelly property and the

Story property off Bear Creek WMA. We thought we'd lump these four game ranges together in the same proposal and give this a try to see if it works. If it doesn't, then we can change the regulation back.

ACTION: *Dascher moved to approve the changes on the general regulation and J. Lane seconded. No public comment. Motion carried.*

Walker - The individual who represents the handicapped association is here now and we'd like to hear those comments now.

Ralph Martin, Access Montana Outdoors - There were two things on the agenda having to do with the disabled. I believe Region 1 was making a recommendation for some special elk tags for disabled in the region. We stand behind their recommendations. In regard to the Montana Bowhunters Assoc. recommendations for adaptations to the compound bow, we stand fully behind what they're doing. We're not sure they've gone far enough, but at this time we appreciate what they're doing on behalf of people with disabilities in the state. We stand behind the idea of ability-based criteria for those people who will be allowed to use the special adaptations. It should be based on what you can do, not what you cannot do.

DEER

Erickson - Next item is deer and elk regulations. Will start with Region 1. My suggestion is to do all of the deer regulations first, by region. Then will go into the elk regulations, by region.

Jim Williams, Region 1 Wildlife Manager- In Region 1 we are recommending no general season structure changes. The first change is a boundary change for HD 101. The second change has to do with antlerless opportunity in HD 102 west of Kalispell. Proposing to create 100 antlerless B tags for whitetail deer, valid east of Farm-to-Market Road. The next change is in HD 132 where we propose offering over-the-counter whitetail deer tags valid off of federal and state forest lands. No changes are proposed for mule deer. There is an additional opportunity for mule deer in HD 130, the Swan Valley.

ACTION: *Murphy moved approval of deer regulation changes for Region 1, Walker seconded, and motion passed.*

John Firebaugh, Region 2 Wildlife Manager - Proposing several changes in Region 2, all with whitetail deer and all liberalizing seasons and opportunities. First is for HDs 200, 201 and 202 where the proposal is to return to an 8-day, either-sex whitetail season in the 3 districts. We are proposing in each of those portions of the district to add 50 antlerless B licenses to address game damage problems. For HD 260 we're proposing a clarification of the regulations. In HD 285 we propose adding 100 antlerless whitetail B licenses because of increasing game damage problems. For HD 292 we propose 50 antlerless B licenses for whitetail. **Ralph Martin** said he thought last year the Commission reduced the number of either-sex B tags for HD 290. Is there any chance of increasing that either-sex B license allotment at this time? **Firebaugh** responded by saying it was unlimited in the past. Had a number of comments and concerns from landowners and some bowhunters about the impact on the buck population. Did drop it to 50 and proposes leaving it in the tentatives at that to see what they learn through public meeting and comments

through the public process. Don't have enough information now to suggest going one way or the other.

ACTION: *Murphy moved to approve the deer changes in Region 2. Mulligan seconded. Motion carried.*

Erickson - We noted in the left hand column of your chart there for last year that there are some quotas that were inadvertently not changed to what was finally adopted. In other words, they reflect the regulations rather than the final quota that was adopted in the summer. What we intend to do when you adopt these regional recommendations is change anything in error here to reflect last year's final quota. Most were changed, but not all.

Joel Peterson, Region 3 Wildlife Manager - The over-the-counter whitetail license was dropped a few years ago and want to utilize it again. It would allow anyone in Region 3 to go to a license dealer and buy a B license for whitetail deer, which would be good anywhere in Region 3, except the south end of Canyon Ferry by our WMA. The next recommendation concerns HD 311 to institute a new hunting season type from Bozeman to Norris. We'd like to focus hunting pressure in the north half of HD 311 by adding 200 antlerless whitetail/mule deer B licenses valid for that area. The third proposal is the Gallatin Valley Weapons Restriction Area, the area around Bozeman, which is restricted to muzzleloader, handgun and archery. There's a great expansion of subdivisions and homes, and it's a safety issue. In this proposal, we're asking to move the closing date back to January 15 and also allowing people to get another B tag through the Bozeman office. The A tag is good until January 15 also. The next proposal is the addition of antlerless whitetail B licenses for HDs 313 by Gardiner, 317 North, 314 on the west side of the Gardiner-Livingston highway and 393 in the Bridger Mountains. You'll see different numbers, 50 to 150 tags, depending on the area. Next is HD 380 where we want to issue either-sex whitetail, antlerless mule deer licenses to try to control some of the game damage there.

Mike Korn, Helena Area Office Coordinator - Here to represent a group of residents of the North Hills, an area directly north of Helena. They have requested a weapons restriction in their community to address problems over the last 10 years of inappropriate and dangerous hunting behavior taking place within the subdivision. The land parcels there range from 20 acres to 40. Antelope, deer and elk inhabit that area. Are attempting to move hunting away from homes and into the hills. They have a block management area that includes BLM, state and Sieben Ranch land. This restriction is part of a larger-scale hunting and access program that has been in place in the North Hills and is for archery, muzzleloader, shotgun and traditional pistol. This proposal is tentative. They are looking at a comprehensive restriction for the entire Helena area valley, which they will work on this winter to possibly propose to the Commission next year.

Dave Lewis, resident. Live right in the middle of this area and a member of the legislature representing House District 55. Had an incident of trespass, spike elk shot and at least one abandoned, and folks shooting at antelope above him on opening day. They have about 150 antelope, a herd of 30-40 elk that move through there and several dozen whitetail. People who called him are small hay producers, so need some ability to manage the wildlife. Thought weapons restriction might be a fair compromise. General consensus is they wanted to manage

wildlife and think this is a reasonable compromise to try to protect the public yet give FWP the ability to manage.

Dave Cole - Problem is the amount of subdivision and increasing development. Currently chairman of Lewis and Clark Planning Board. County has approved additional subdivisions totaling about 300 more parcels in this same area. Expect increasing levels of growth. Supports hunting. This is not an anti-hunting issue. The hunter behavior they've seen is the worst possible image of hunting. It's a public relations disaster and a very dangerous situation. Would appreciate the Commission's support of this proposed weapons restriction.

Jim Martin, resident - Supports hunting. Need Commission support in this weapons restriction for deer, antelope and elk. Thinks this will cut down on the poaching problems. Weapons restriction would cut down on that because people with high-powered rifles are doing this.

Korn - This would only apply during hunting season and does not affect shooting activity there outside of Commission-sanctioned hunting seasons.

Peterson - I forgot two minor things. I forgot about the Canyon Ferry change. At the WMA, mentioned earlier that it was excluded from the over-the-counter tag because of concerns about safety and deer numbers. There was an omission last year. A portion of 380 in the WMA was excluded from the antlerless B license. Want to include that in HD 391 this year. So the HD 391 regulation as it relates to hunting whitetail, you cannot hunt antlerless whitetail on the WMA unless you have a special tag from HD 380, which would allow you to hunt there for antlerless whitetail.

The other thing is to add 150 additional mule deer tags to 300, 302, 319, 331, and 340.

ACTION: Mulligan - *I move to increase HD 333 mule deer tags from 50 to 100; and HDs 300, 302, 331, 319 and 340 to 150 mule deer tags. Walker seconded motion. No public comment. Motion carried.*

ACTION: Mulligan - *Move approval of the tentative deer regulations for Region 3, as amended. Dascher seconded.*

Murphy - I assume this includes the firearms restriction. (Answer was "yes.") There was a comment about potential for additional hunting opportunity, particularly with antelope. I know there is a good herd of antelope out there. By eliminating rifle shooting, those antelope are probably going to be harder to get out of the area if they're having damage problems. Was there discussion about the potential for more tags for muzzleloaders and bowhunting for antelope? **Korn** responded by saying there was discussion about this. A lot of it has to do with where those antelope are habituated. We feel we can do muzzleloading and shotgun hunting to address it. Will also continue to work with landowners for hazing, herding, and kill permits, if necessary.

ACTION: Walker - *Had a motion. All in favor say "aye." Motion carried.* I'm going to recognize someone in the audience who didn't get an opportunity to speak.

Mary Ellen Schnur, Montana Outfitters and Guides Assoc., Fish and Game Committee Chairman - When does the Adaptive Harvest Management Plan kick in on the deer plan? Does the change happen now or some other time in the year? **Erickson** said the unlimited permits for bucks are to increase the buck ratio. If go back to the general antlered buck season and meet that ratio, in most cases the ratio drops and they go back out of that regulation. The bottom line is once it goes to unlimited permits, will probably stay at unlimited permits. The only thing that could happen under their deer plan is if they don't meet the buck/doe ratio that is set up, it could go to limited permits as a next step. There is no provision in the deer plan to go back to antlered buck permits once they hit unlimited permits because that moves it back to a lower buck/doe ratio than the objective. **Mulligan** said may need to consider different alternatives in the adaptive harvest management plan because may start to see a cascading effect. Buck ratios are dropping in some areas in southwestern Montana. The more we go to restrictive permits that can push people into other areas, may need to look at the whole picture of what the net effect is. **Murphy** said the pressure in other areas has significantly increased associated with districts next to those that have been affected by the restrictions. One of the comments he receives from a lot of people he meets with is that hunters looked at that alternative as a means of getting back the numbers, realizing that the deer populations, particularly the buck populations, were struggling. The hunters look at that, however, with the understanding that when the numbers come back up there would be a move back towards the generalization of that season. Also has a concern personally about that.

Clifford Cox, landowner in HD 380 with property on the south end of the Spokane Hills - Regarding the permit system on the mule deer, hunters told him they weren't aware of the permit requirement for mule deer, and when they received their license, they were forced into hunting whitetail only. This put an abnormally high pressure on the whitetail.

Graham Taylor, Region 4 Wildlife Manager - Of the changes that we're recommending, one change occurs around Fort Benton. This is mostly a cosmetic change, although there are additional permits involved. We propose to eliminate tag-on language to 405 and add some separate B licenses in HD 471. Another change we're proposing occurs along the Rocky Mountain Front in HDs 422, 425 and 424. Proposing in each district outside the forest boundary to add a season structure to allow the take of antlerless mule deer the last two weeks of the season. Another change is in HD 445, where we're recommending a reduction in mule deer B licenses from 700 to 500. **Hagener** asked if there was concern over EHD and what it did to whitetail numbers. **Taylor** said where they had EHD break out this fall, it appeared to follow the main stem of the Missouri River. Also had a substantial outbreak of EHD on the Marias system. However, for every dead deer they found, there were still very high numbers. Based on information like that and knowing there are very high numbers of whitetail deer, they found no reason to back off.

Pat Deeschmaker, Lewistown - They have ranches in HDs 411 and 412. Talking to a lot of hunters who put in for the antlerless mule deer tags and don't receive them, there appears to be confusion over the fact you can then buy mule deer tags over the counter. Suggest eliminating the drawing for 300 antlerless mule deer tags, and just have an over-the-counter whitetail or mule deer tag. We have close to 600 deer just on our two ranches and yet the drawing is for just 300. **Taylor** responded that it is true what he says about deer numbers. In 411 and 412 they anticipate

raising B licenses through the drawing process. They had not considered an over-the-counter mule deer B license. The beauty of the whitetail over-the-counter license in Region 4 is that it is uniform across the region with one exception. If we started segmenting out portions of the region for an over-the-counter mule deer B license, the potential for confusion is great. Suggest just substantially increasing number of mule deer B licenses available through drawing process to address the problem. **Dascher** asked if something could be done on publicity so it is well known that hunters can apply for these licenses ahead of time. **Taylor** said he has no problems with that and can come back later with some better numbers. **Walker** said it appears to him that efforts to micro-manage these deer populations is “biting” us. A number of hunters look through the regulations, compare them to last year, look for signals, make a choice on a permit and then get to the hunting season only to find a lot of private property closed to them. So the hunter is manipulated into a permit they may or may not be able to use. Need to back up thinking and look at big picture. Region 7 does that, for example. The hunters find the game in Region 7 and they find the access because it is virtually all managed in the same way. Worry that we drive hunter behavior. **Taylor** said he asks himself, what is the alternative? Had over-the-counter mule deer and over-the-counter antelope licenses in the past. Found themselves going away from them, perhaps for some of the reasons you just listed. A method that has been fairly effective in directing hunters to specific properties was writing a letter and giving a list of landowners/phone numbers. Welcome other suggestions. **Walker** said he would like to do that at the front end rather than the tail end of the season. Trying to see that hunters have an opportunity through the entire season. Don’t see the depredation hunts until the end of the season. This is unfair to hunters.

Mulligan - In Region 3 where there is a lot of public land, the over-the-counter whitetail tags have come and gone. A downside of going back to them is that those tags draw in people from outside the area who don’t know the area. They have difficulty getting access and then get upset with FWP for selling them a tag they can’t use. Another thing that happens is there is a percentage of hunters who don’t like to ask permission and will go to public land only. For the over-the-counter tags, really need to look at the topography and the public/private land mix in these areas. **Deeschaemaker** suggested landowners purchasing tags and then giving them out. They have people coming to them who have to go back to town to purchase a tag. **Walker** said they have had discussions of that nature but it is beyond the scope of the meeting today. **Mulligan** asked if in the two districts it is predominantly private land so could go with unlimited antlerless B tags. **Taylor** said in the two districts, 411 and 412, there is a good bit of BLM and Forest Service land there. **Dascher** asked about access to private land in 411 and 412. **Taylor** said it was reasonably good.

Taylor recommends doubling the number of B licenses in the two districts, 411 and 412, from 300 to 600.

ACTION: *Lane moved to approve this amendment. Dascher seconded. Motion carried.*

ACTION: *J. Lane moved to accept the deer tentatives for Region 4, as amended. Dascher seconded. Motion carried.*

Charlie Eustace, Wildlife Manager, Region 5 - The only change they have with respect to deer is whitetail. It is HD 597, which includes HDs 500, 530 and 590. It includes the lower portions of the Yellowstone-Musselshell where they had a significant die-off from EHD. They recommend reducing antlerless white tail deer permits from 750 to 300.

ACTION: *Walker* move to accept department's recommendations for deer tentatives for Region 5. *J. Lane* seconded; ***motion passed.***

Harold Wentland, Wildlife Manager, Region 6 - Region 6 had a severe winter in the extreme eastern portion of Region 6, which includes HDs 641 and part of 640. Had some of the highest numbers of whitetail deer they had ever seen and then saw a 50-60% winter die-off. Late in the summer and into the fall in the western part of the region had an extreme EHD die-off of whitetail deer. At least 120 individuals, mostly landowners, estimated about 750 dead whitetail deer, mostly along the Milk River. Recommend reducing number of 698 and 699 tags to 500 each instead of 2000 each, and valid only in that portion of the region. Also, there is an error. The 698 tags are to be valid only in that area, but in the tentatives it says valid region-wide. Want to continue with single region, over-the-counter tags for whitetail.

Spring surveys showed reduced mule deer numbers in the western and central portions of the region. The post-season surveys, however, show numbers above the long-term average. Need to consider this in adaptive harvest management plan. Recommend 50 mule deer tags in 600, 50 in 610, 100 in 630, 50 in 652, and 50 in 670.

They have a disabled hunt for whitetail by Fort Peck, which is run by the Army Corps of Engineers. They had 2 either-sex whitetail permits last year; they want to increase that to 10.

Dascher - Will have to make an amendment here on the 698 antlerless, nonresident, whitetail deer B licenses. It shows valid in all districts of 600, but we need it to show valid only in HDs 630, 631, 632, 640 west of Highway 16, 650, 651, 652 and 670 only. **Mulligan** asked for clarification. He has assumed when we say, "What the department proposed," it's what the write-up shows and not what is in these charts because there are errors. We can't use these charts. We'll have to go back and look at a number of things that are wrong. **Childress** said hopefully they are catching things that are incorrect as they go through it. **Mulligan** said at least for Region 3 need to do what is in the write-ups.

ACTION: *Dascher* moved to accept Region 6 deer tentatives. *Walker* second. ***Motion passed.***

John Ensign, Wildlife Manager, Region 7 - Propose no changes in season structure for deer. Propose an administrative change to drop the cap on nonresident whitetail doe licenses. The cap has been in place for three years and has never been met, so it doesn't really mean anything. Would make it easier administratively if the cap was gone.

Walker - To the extent regulations are read by hunters and stimulate the application for permits or for hunting, this will increase that. As we are finishing up with deer, it appears we may not meet our targets for next year. Hunters may not achieve the harvest we want to see statewide. Don't have a solution for it, but do have a concern. I believe when hunters look at the

regulations, those regulations help determine where they will hunt or make application. We see permittees coming into a region who have never set foot in that region. They show up in regional offices looking for directions. All they know is what they have read. Our regulations stimulate hunter behavior. Will dropping that cap stimulate hunters to go to Region 7 but thereby reducing participation in the other regions? Is that what we want? We are handling it differently from region to region. **Dascher** said this is for nonresident licenses and most of those come in from North Dakota. They don't go past Region 7. **Ensign** said that functionally, removing that cap shouldn't make any difference. Doesn't think it will attract more hunters. The number of nonresident, whitetail doe hunters they've had in the past three years has remained fairly stable. It's more of an administrative change. **Mulligan** said when you have private ground, they regulate the number of animals killed. That's not the case in Region 3 because there is so much public ground. People I know put in for their permits locally and then travel to Region 7 for over-the-counter tags. You stimulate people from outside an area to go there for over-the-counter tags, much more than B tags.

ACTION: *Walker moved to accept recommendations for Region 7. Dascher seconded. Motion passed.*

ELK

Jim Williams, Wildlife Manager, Region 1 - Fairly conservative for elk season structure in Region 1. They get excited over calf recruitment numbers that are considered average in other parts of the state. Elk in the northwestern corner of Montana tend to be browsers so less productive. Had three strong calf recruitment years. For that reason they are looking at increases in antlerless permits. With HD 100, proposing to go from 50 to 100, for 103 from 50 to 100, 104 from 50 to 100, 121 from 125 to 225, 122 from 50 to 100 123 from 75 to 100, 124 from 25 to 50, 101 and 109 offer 25 antlerless elk permits on each valid on private land only. Trying to focus hunters in 109 onto private land and keep it open until January 31. Whole intent is management flexibility for antlerless elk. **Mulligan** asked if anticipate going back to 8-day either-sex tag. **Williams** said they have looked at brow-tined bull, antlered bull, either-sex and biologically they could, but public support would be minimal as people in Region 1 are so conservative. **Mulligan** said they have seen a huge influx of western Montana hunters into southwestern Montana, which seems to correspond with change off that eight-day season structure. Biologists don't know what to do about it and sportsmen's groups want to go to a validation process. Would rather see increased opportunity in western Montana before going to restrictions in southwestern Montana. **Williams** said it would be extremely difficult in terms of local support in northwestern Montana. Could explore it and there are a few districts they would definitely want to exclude. Assume you're talking about the lower Clark Fork. **Mulligan** said he is stating this as background information as some time will want to address the crowding problems in other areas. **Williams** said you would want us to explore an either-sex component during the season for some period. Biologically, we could sustain it and it has been proposed in the past but not supported. **Mulligan** said the problem is the first week of the season in SW Montana.

ACTION: *Murphy moved approval of proposed elk tentatives for Region 1. Mulligan seconded. Motion passed.*

John Firebaugh, Wildlife Manager, Region 2 - In the Bitterroot Valley in HDs 204 and 261, recommend in each district, both of which are broken down into north and south portions, the A-7 license be valid beginning September 1 on private land only. This is to address game damage problems in both districts. There are a couple of areas where access is difficult, but most landowners are supportive. It will impact archery hunting in some of the area. Another change is in HD 283, where they recommend going to a brow-tined bull season to boost the bull/cow ratio. Will reduce hunter opportunity to harvest spikes, but they have had a fair amount of support to go to brow-tined bull in 283. Another change they recommend is in 282 and 285 where they also propose going to brow-tined bull season. Are meeting objectives for the elk plan in 285, but if they go to brow-tined bull in 282 and most of 292, that would leave 285 as an island so thought it would simplify regulations if 285 was included as a brow-tined season. In 285 also recommend increasing the A-7 licenses from 50 to 100 because of an increasing elk population there. In 292 they recommend in the east half (292-01) increasing the antlerless permits from 50 to 100. In the west half of 292 they recommend this area go to a brow-tined bull season. In the 292-03 portion, they had recommended an earlier season to address landowner concerns. Landowners returned this week wanting to withdraw that recommendation as they want to look at other options to address their problems. They are withdrawing the 292-03 recommendation for that reason. **Mulligan** asked for clarification. In 283, the columnar chart indicates archery is going to brow-tine, but write-up does not. **Firebaugh** responded that the 6-week archery season from early September through mid-October would be brow-tined.

Jim Clawson, Western Montana Fish & Game Assoc., Missoula - They have studied the Region 2 cow-calf ratios, bull-cow ratios, and hunter success rates for a number of years. In 285 with brow-tined bull season, winter counts on bulls have been very good and may be on an increase. The cow/calf ratio, however, is down to 22 calves/100 cows. In Region 2 the overall ratio is down to 25 calves/100 cows. In 285, most of the area is shut up by Plum Creek with gates. A lot of it is Forest Service land with very good security. Can't see any reason for taking hunter opportunity away from individuals when there is plenty of game in the area. Basic recommendation is not go to brow-tined bull season in 285. **Walker** encouraged Mr. Clawson to participate in the regional meetings, and that John Firebaugh take note of Mr. Clawson's comments.

ACTION: *Murphy said he shares Mr. Clawson's concerns but at this point, based on what the department has shown and his discussions about the issues, he moves to accept the department recommendations on the elk tentatives for Region 2 as proposed. Mulligan seconded. Motion carried.*

Joel Peterson, Wildlife Manager, Region 3 - Some recommended changes are in the Bridger Mountains north of Bozeman for HDs 312 and 393. The Elk Management Unit objective is for 2300-2600 elk and they're at almost 3,800. In the last week of the season, the south half (includes a portion of HD 390), you cannot hunt a bull, but it is wide open for antlerless for anyone with an elk tag. For these two hunting districts, their proposal is to also open the south half to antlerless hunting for anyone with an elk tag. Another recommendation for those two hunting districts extends the seasons to December 15. The antlerless permits are actually brow-tined bull/antlerless permits and they would become antlerless only after the general 5-week gun season and until December 15. Also recommend in 317 extending those permits to December

15. Another recommendation is to post for safety reasons in an area from Gardiner to Little Trail Creek. For HD 323, a minor recommendation is for a legal boundary change on the Wall Creek Game Range. In HD 335 near Helena, we have A-7 permits good after the general season for 2 weeks until December 15 and valid in the entire hunting district. They would be good for 6 days prior to the general season on private land only, then during the 5-week general rifle season valid anywhere in the district, and then valid only on private land until December 15. **Nancy Kraft** said that for 314-06, "Permit to Hunt from a Vehicle," the only change allows a companion to apply for a permit along with the handicapped hunter. The wording is changed to reflect that. **Peterson** said the proposal for antlerless/brow-tined bull permits is for 8 days in the first part of the season for HDs 311, 360, 361, 362. Additionally, they would add 314, 317 and 315. Since they are already either-sex on the permits, they would be either-sex for the first 8 days.

Walker - Are there any comments other than from those in the Madison area or from HD 380?

Vito Quatraro, Headwaters Fish and Game Assoc. - We wanted to make a recommendation regarding HDs 393 and 312 where they are adding the two-week extended period for the antlerless permit holders. We're requesting that any valid youth elk license holder also be allowed to partake in that extended season. Since they're already extending the season from December 1 to December 15 for antlerless elk permit holders, we'd like youth included in that category. It would pertain to the five districts Joel Peterson mentioned.

Peterson - From the department standpoint, anything we can do to increase youth participation is good. Support the idea, but don't know the logistics of implementing this. We have not run this by Enforcement and they could have some concerns about additional hunting pressure. There is some discussion that needs to take place here. Certainly don't oppose increasing the opportunity for youth. **Walker** suggested including those five districts (312, 314, 315, 317, 393) as these are tentatives, and then use the ensuing five months to modify that if necessary. **Peterson** asked if any youth with an elk license could hunt an antlerless elk in those districts for the two weeks? Is there a problem with it legally or logistically? **Childress** responded that it could be just another separate season type on the regulations. It's not a permit; it's a different license type. Will check it out as far as legal requirements. **Murphy** asked if there is a definition of what a youth hunter would be. **Peterson** said there is. **Walker** said he would make a motion at end of this so will have direction as to what the Commission wants to see.

John Crumley - Madison Valley Ranchlands Group - This is where the elk numbers are in HDs 320, 330, 360 and 362. We realize we have too many elk. Part of the reason is that some of this land was locked up and access was not allowed for quite awhile. Got the landowners together and worked out a proposal for this year, which is for an A-7 tag to be used only on private land, start the season early and end late, yet not interfere with the late seasons already in place. Landowners feel the late season is an effective tool. Before purchasing the A-7 tag, which would be offered over the counter, the hunter would need written permission from landowner. The Madison Valley Ranchlands Group is proposing, along with some sportsmen's groups and the elk foundation, to help manage the A-7 hunts on the private property along with the landowners. I don't know that this has happened anywhere in the state. Don't yet have it all worked out. Some of the landowners have allowed access for youth hunters and disabled hunters. That is the

part the ranchlands group would manage. It's a foot in the door and if they see it working, it may increase the access on that private property.

Have a problem with spring and winter grass being used by the elk. Another problem is large areas in the Gallatin and Moonlight Basin have been sold for development where hunting is not allowed. The habits of the elk have changed. Used to be the elk went into the mountains in the daytime and come out to the flats at night to feed. Now they're out on the flats all the time and move in earlier. Again, this A-7 tag would be over the counter, would need permission from a landowner, and have to turn in a valid bull tag just like the regular A-7 tag. It would have to be a managed hunt. That's the only way we're getting access on some of this private property. Would also like to see some legislation on B tags so someone could kill two elk in a year, and sell an over-the-counter cow tag in those areas. We're not proposing that now, but want people to think about it. Don't feel a need to include the Gravelly area as there is a lot of public land there.

Kurt Alt, Wildlife Biologist, Region 3 - He and local game wardens worked with the Madison Valley Ranchlands Group and local sportsmen's groups on this issue. They looked at all kinds of things and settled on this thinking it might be a nice combination with the first eight-day either-sex proposal and try to key in on private land access through an A-7 type of approach. Feel very comfortable going out with this for public review. **Mulligan** asked if looking at all of HD 330 or just the east half. Thought it might be something the west side was interested in. **Crumley** said east and could come up with a boundary definition. Would say not the west side. That's because it may work in our area as we will try to manage the hunt in cooperation with the landowner. **Peterson** said he is not sure need to put in another boundary if they must have application from a private landowner. That way could have the entire district, but could use it only where they have permission on private land. **Quatraro** said they have worked with the ranchlands group on this proposal and wholeheartedly support this. Emphasize that these A-7 tags would be good only on private land. Would like a season date starting September 1 going to February 15. They have noticed the elk are moving down to flats prior to opening of general season. By having the A-7 license good early you'll have some harvest plus push the animals back up into the National Forest where other hunters can get to them.

Walker - Will there be expanded access to the National Forest through the private lands? **Alt** responded, "At this point, no." We're going down a "new road" with this, both for sportsmen and FWP. There are a lot of non-resident landowners, as well as traditional resident Montana ranchers. Just started this effort with regard to the elk three months ago. Access has been an issue all along. Won't accomplish all we want right away. Will be discussed as this group develops and matures. Access will continue to be discussed. A concern is in HD 360 as far as access to Jack Creek and the Yellow Mules because of development there. Development interests and others now own that land that represents spring, summer, and fall range for elk. The entire elk unit is now on private land in the mountains. We haven't devised a way to get onto those lands, which are non-agricultural lands, to harvest elk. That is critical to a solution to some of the elk problems there. **Walker** asked if there is an inventory of private lands that are outfitted. **Alt** said, yes, they know which ones are outfitted and which ones are not. **Walker** said that is an area he has hunted for 20 years and is familiar with it. Reluctantly supports what you're doing, but wants to attend some of the meetings as has concerns from some of the

sportsmen's groups that are not represented. **Alt** said he would be welcome to attend. In HD 362 there is one landowner who outfits a portion of his ranch. Another landowner doesn't outfit and doesn't have the opportunity because of an easement that prohibits outfitting. In HD 360 there are three of about six major landowners who outfit. The non-outfitted landowners in most of that area are allowing pretty much wide-open access. On the other end, there is someone who doesn't allow any hunting. The group is trying to break down barriers.

Stan Frasier, Montana Wildlife Federation - Forest Service has the ability to create access. Feels they haven't done that in a lot of places. If they would, would make your job a lot easier. This Commission should put some pressure on the Forest Service to do their job. **Hagener** asked if something has been worked out on the permission slips. Is it a coordinated basis and how is it done? Would you go down to the sporting goods store to buy that license or is that just through our offices? **Mulligan** suggested it be through the Regional Offices and not through the license agents. Supports it and thinks it's an excellent process and model to help us in the future. As we look at the elk management plan, it's a unique idea and something we should look at. Definitely want to put it out for possible broad-based application, and strongly recommend not including private license agents. **Hagener** asked if a coordinator would line up the permission. **Crowley** said they have a proposal with the landowners to handle that for them, but haven't worked out all the details of it. Talked about raising money and hiring somebody to do that. **Alt** said he talked to Alan Charles and there is a possibility of setting up a contract through our Access Program. Have done that in another place to provide support to the Madison Valley Ranchlands Group for a person to do that. **Hagener** said the Bear Paw working group did something similar this year, it was all coordinated and it was much better hunter success this year than it had been in the past. **Crowley** said in some of the places they are getting very limited access where normally wouldn't have any. As they see it working and there are responsible, good hunts taking place on that property, thinks you will see it open more.

Peterson - I have a backup comment on the youth opportunity, which Vito brought up. It could create a large volume of youth, which is good. There is a lot of private land in this area and it could also be negative. If we get too many people and they can't get on where the elk are, we need to think about that. Through the efforts of Vito's group and others, we had special youth hunts in those areas that worked very well. We've also had landowners who have dropped out of it. Should think about it during this tentative process as a potential downside, and make sure we're thinking about it during the public review.

ACTION: ***Mulligan** - I move an amendment to the proposed department recommendations for Hunting Districts 320, 330, 360, and 362, which proposes the sale of unlimited A-7 tags, cows only, valid September 1, 2002 through February 15, 2003. These tags could be used only on private lands. These tags must be purchased prior to the beginning of archery season. The purchaser of these A-7 tags must have a signed permission slip from a landowner in these areas. These tags would not be valid during the already established late hunt in Region 3. **Walker** seconded.*

Walker - Was it your intention to retain the late season, and the regular season cow permits? They are not shown on these sheets. **Peterson** said, "Yes, and they are not shown because

they're not a change." **Mulligan** said only the changes are addressed. Assumption is that anything that is not mentioned remains the same.

Walker - Have a motion for an amendment and second to that motion. Is there further discussion?

Crowley - I would like to endorse that and also invite the Commission and the Chairman Dan Walker to the meetings; you're welcome any time.

Motion carried.

Peterson - In 380-03, the antlerless permits started early on September 1 and they are good for the south half of 380. The proposal is to eliminate the early hunt for those permits in the south half of the hunting district, and make them good only for the 5-week general season.

The other change is for the A-7 tags and the season would run as follows: 380-01, valid during the 5-week general season, for 100 permits for either-sex elk; 380-02 would be for 300 permits for either-sex elk valid the entire district in 380; 380-03 would be valid the entire 5-week season for 100 antlerless elk permits valid in the south portion; 380-04 is 100 permits as it exists now valid in the north portion; 380-05, 300 A-7s, which would run from September 1 through December 1, and valid on private land outside the general five-week elk season. There is a proposal from private groups for increasing the number of antlerless tags quite significantly over what we have proposed. There is also a proposal to increase the either-sex tags from 100 to 1,500. At this time want to talk about the season structure in the Elkhorns.

Korn - Assembling a working group sponsored by all the federal and state agencies with authority in the Elkhorns. The Rocky Mountain Elk Foundation and Forest Service have provided a grant. The purpose is to bring a group together to work through some issues addressing elk numbers, grazing and things that have spun off of that. Sending a letter inviting people to be part of these groups. Optimistic about getting people involved with it and management of the Elkhorns working on an even keel.

Tom Carlsen, Wildlife Biologist, - Proposing a change in the A-7s permits by going district-wide. In the past in the Elkhorns we had early hunts going on at the same time, in different areas, and under different types of permits and licenses. This proposal would put the early hunts under the same type of permit, all A-7s. We're also proposing this because a portion of the hunting district is not included in the early hunt situation. The other change, which Joel didn't mention, currently on the north end the A-7 permits are valid during the late portion of season to December 15. We propose to eliminate that late portion unless a number of landowners want to maintain it.

Mulligan - I worked with Tom to put this together as we saw a need for a suite of tags to address the numbers of elk in that area. We have antlerless tags good for the whole district, antlerless tags good for the south portion, antlerless tags good for the north portion, and antlerless tags through the A-7s valid for the whole district that can take us outside the standard season

structure. Given that suite of structure, we can manipulate permit numbers anyplace in the area as needed. Need that flexibility to make adjustments.

Elaine Mann, Broadwater Co. Commission - Very serious about the working group. Want to be thorough on this. Started this action because going into a four-year drought. When landowners come to her, it's serious. Had a drop in hunters and it's related to weather. There is a change in the elk movement. Don't know why. Want to reassure the sportsmen in the group that this is a temporary adjustment in numbers to give relief from drought and build up their rangelands.

Dave Clark, rancher from Winston area - Proposal is that instead of having 100 permits for either-sex elk in 380-01, want 1,500 permits for brow-tined bulls only, with check stations throughout the area. The rationale is they want to get it to brow-tined like most of rest of state. Fewer hunters are coming into the area because they don't like the spikes-only season. Also recommend adding \$1 to be earmarked for the block management program, which would be added to all conservation licenses sold to residents. For 380-02 would like to increase that to 800 antlerless permits; 380-03 propose 300 antlerless permits, starting in September going through the season; 380-04 propose 300 permits for antlerless elk; 380-05 propose 200 A-7 permits; and antlerless elk permit issued to all landowners actively engaged in farming and ranching in hunting district 380, valid on private land with a list of qualified landowners given to FWP. There are about 40 people there.

Mulligan - As far as actual permit numbers, that's open until August and I hesitate to increase this much until have some counts. The structure system is not related to elk damage/habitat. That limited permit is based on public preference to have some trophy areas around the state. My perception is it's an extremely popular hunting district. I have no problem putting out to the public as an alternative in the Elk Management Plan changing back to a brow-tined season. I don't think season setting is the right way to do that and the Elk Management Plan is the right way to do that. The concept of public preference was established in that planning process. **Murphy** said that as far as acceptance of spike-only hunting, there is a lot of support for it, but also a substantial number against it. I think the brow-tined programs in the state have worked well. The pressure in other areas seems to come from hunters going to other areas when they can't draw what they want elsewhere. **Walker** stated that in addition, will not address the additional increase for the conservation license fee today. Besides, the Legislature must address that.

Virgil Binkley, Broadwater Rod and Gun Club, Townsend - Support the proposition to have spike-only changed to brow-tined. There is plenty of room in the Elkhorns for quality hunting. If the numbers in this proposal seem large, it's because the spike harvest this year is down substantially. The population of bulls throughout the age class is greater, and 100 permits is not enough.

Virginia Knerr, Broadwater County Extension Agent - The proposal was not submitted by the County Extension, but it was submitted by the group of landowners in HD 380 on the Jefferson County side. I like the changes in seasons on the A-7 license. From the Jefferson Co. landowner, they highly recommend keeping that early season on the Boulder side. They would like the cow season to be more flexible, something allowing them to get more elk off the private

land and back onto the public lands. **Mulligan** said the perception is landowners do not want the late season. Is your perception they do want it late? **Knerr** said for the A-7s, yes, they can run it late. On the Boulder side, it's the early season they need to keep. They also like the late season, but they like that September 1 time frame to get the elk moved off the private land. They like those seasons outside the general hunting season. With hunting pressure, the elk get moved around somewhat. Those early and late seasons definitely help. That's why in one proposal one of the options was to extend the cow season by two weeks or open up the last two weeks of the season for general permit holders for antlerless elk. It seems like lately in drought years that last week is when we finally get some snow and weather to start moving the elk around, just when the season is ending. Another comment is the elk migration has been cut off by some of the subdivisions coming in, so elk are taking different routes. We're looking at a whole new management issue on where these elk are moving. The working group is going to be very helpful and useful to us in the future.

Cliff Cox, landowner in HD 380 - Support the proposal of this working group and urge you to include it in the tentatives and get it out for public discussion. On the A-7 time frame, need the early hunts to get elk off the private land. Late season is when he and others can finally get out there. Doesn't want to see the season shortened for that reason.

Carlsen - Comment on what hunter numbers have done over time. Compared three years prior to implementing the spike season, did it statewide and for HD 380. It shows that it is a popular hunting area. Under the proposal just made, there would be a total of 3,100 permits. In the year 2000 in HD 380 there were 4,471 hunters. So you'll lose over 1,000 hunters under the permit system. **Walker** said the department proposal was to end the A-7 license at December 1, but we've gotten comment to extend that. Would you comment on that? **Carlsen** said the way we wrote it, if there was enough interest from landowners, it certainly would be acceptable. Looking at it overall in a large area, it doesn't add that much to the harvest. The reason for doing away with it in the proposal was that on the south end we had just done away with an extended season. Without talking to landowners down there, wasn't comfortable with proposing extending it again. If there is interest on their part because the extended portion will be on private land, certainly would have no problem with it. **Mulligan** said he would rather go out with the extended season, and make an effort to contact landowners, particularly those who had concern with the late season, who don't want it extended. Try to get comments from those who don't want it extended rather than the other way around. Would want comment from the public also on that. Go with December 15 to be consistent. As far as a motion, is the HD 380 proposal part of the tentatives so we don't have to make a separate motion for the department's recommendation? **Erickson** responded, "No, because the original proposal that was sent to you was changed just now by the late submission of Region 3." What you're seeing on this chart is the original proposal. The one that was presented by Joel was a change to that with a late submission. What we need to do is by line item, 380-01, 380-02, etc., state exactly what you want it to be so that we get it straight in our records. **Walker** asked if in dealing with numbers of observed antlered bulls, can you liberalize that kill and maintain the trophy class of animals? **Carlsen** said when they revised Elk Management Plan objectives this past year, they added a few objectives specifically for bulls. One of them is age structure and percent of older bulls in the harvest. Have some objectives that really drive the number of permits issued in conjunction with what they see on the winter range. A big function of how many permits they can issue is how

many yearling bulls are recruited from one year to another. It was just mentioned that they have a big number of yearling bulls coming into the population, and that's not true. Had poor calf production two years ago, so the number of spikes out there during this hunting season was a third to one-half of what they normally see. That has a direct impact on the number of either-sex permits they can issue. It affects one objective and that's the percentage of bulls wintering in the population. Have to adjust levels to meet objectives. Would be glad to sit down with the Commission, at your convenience, and go over the Elkhorn situation. **Walker** said he is supportive of that season structure, but question is, if have 50 more permits likely would harvest 20-25 more bulls. Would that affect what's going on out there? **Carlsen** said over time, "Yes." In the year 2000 had good weather conditions, bulls were on winter range for about half the season, and the harvest rate was about 75% successful. Harvesting at that rate over time you would see a decline in the age structure of that older bull segment. Thinks the harvest rate is down this year compared to last year.

***ACTION: Walker** - I'm making a motion, separate from HD 380, to increase the bull harvest.*

Quatraro - Mr. Carlsen, can you give some population numbers for that herd? **Carlsen** responded that last year on the winter range they saw 1,700 elk with about 160 bulls in that herd. **Quatraro** said a lot of their members hunt the Elkhorns. They oppose the 1,500 permits. Don't want it overcrowded with hunters. Want to maintain that trophy quality. This working group is a great starting point. Where the ranchers have damage, use the A-7 antlerless tag such as the Madison Valley Ranchlands Group is doing to manipulate the population. Like that a lot better than the 1,500 bull permit concept.

Frasier - Shocked over the 1,500 number for permits. The best information they have on the population numbers is Tom's count. Any other numbers of elk in the Elkhorns is pure speculation. Best to wait and see what comes from this working group.

Mary Schuller, Helena resident - Recommend listening to biologists, they know what they're talking about and have the science to back it up.

Allen O'Neill, live by Warm Springs Creek on west side of Elkhorns - Urge you to support the recommendations of the biologists. Support spikes-only hunting season wholeheartedly. Getting an either-sex permit is a privilege and don't want that denied to guys who like to hunt big elk.

Karole Lee, Clancy - Encourage the Commissioners to support Tom Carlsen's figures. He knows what he's talking about.

Mann - Weren't talking numbers at all when they look at this. What they looked at was the harvest is generally around 30%. They put that number together from what they hear from their farmers and ranchers. We're looking at another drought year. It's only temporary. Can't stress enough that this is only temporary.

Walker - Glenn, please repeat what you're written down on HD 380.

Erickson - This is what I believe Joel presented.

- 380-01 remains the same as it was in 2001 with 100 permits.
- 380-02 remains the same as in 2001, except it is now 300 permits instead of 400 like last year.
- 380-03 is an October 27 to December 1 season with 100 permits for antlerless elk valid in the south portion.
- 380-04 is an October 27 to December 1 season with 100 permits for antlerless elk valid in the north portion.
- 380-05 is a new season type, September 1 to December 1, 300 A-7 antlerless elk licenses valid on private land from September 1 through October 26; also valid entire district from October 27 to December 1.

That's the original proposal from Joel Peterson. The discussion about extending the A-7 to December 15 would have to be an amendment from the Commission.

ACTION: *Mulligan* - I move to make an amendment to extend the A-7 tags for 380-05 on private land only from December 2 to December 15. *Walker* seconded. **Motion carried.**

ACTION: *Walker* - I move to amend the motion that HD 380-01 be increased from 100 permits for either-sex elk to 150 permits for either-sex elk. *Dascher* seconded. **Motion carried.**

ACTION: *Mulligan* - I make a motion to approve HD 380 as proposed by the department and amended. *Walker* seconded. **Motion carried.**

Hagener - The assumption is that the spike-bull season remains the same. **Mulligan** said that is correct; not affecting the season structure at all.

Walker - We have finished 380 and now we must do all of Region 3. Before we do that, I would like it in the minutes that the department move forward on the youth hunting issue in Region 3. I would like to see something included. If I need to make a motion to have it included for this coming year, I will do so as I would like it to take place this year. **Childress** asked if he was looking for us to explore this expanded youth opportunity on a statewide basis rather than these four districts. **Walker** said, "Yes." **Childress** said will explore that option and can probably put it out as a part of the tentative package if something is structured. We'll look at it in terms of the detail. Not sure as it was proposed if we can do that simply by allowing anyone between the ages of 12 and 14 to hunt an extra two weeks, or if it has to be a permit. But will explore that.

ACTION: *Mulligan* - I move approval of Region 3 tentative elk regulations, as amended. *J. Lane* seconded. **Motion carried.**

Graham Taylor, Wildlife Manager, Region 4 - First is a small boundary adjustment moving a hunting district boundary from a road to a creek on the edge of HD 422 and 424. For HD 425, which includes the Sun River Game Range, propose a language change allowing them to take the longer portion of a season, or the quota, whichever is later and thereby allowing them to take the season a bit longer on the private ranch. The second change for HD 425 is the addition of four either-sex permits for elk. In HD 445, propose eliminating an early season. The last change

we're proposing is in HD 450 where we're saying that the permits valid in 450 would also be valid in a portion of HD 442.

Mike Bay, landowner in 423 - For 423 and 421 the targeted number of elk is 500. Last spring the count was 858 and that was before calving. There are too many elk. All the landowners in that area would like an either-sex season. **Dascher** asked about access for those elk. **Bay** said they have a conservation easement and block management on their property so the access there is good. It varies from ranch to ranch; some offer good access and some is not so good. There is also Forest Service land along the Continental Divide.

Dave Hoon, landowner in 423 - Concur with what Mike Bay just said. There is a target of 500 elk in that area and the number is well over 850. Would like a tentative opening the season for antlerless for at least four weeks. It was done in the late 1980s when they had a similar situation, it was four weeks and it did the job.

Taylor - Concur with those numbers given and they are well over the 500 elk objective with a present count of 850. They are talking about two adjacent hunting districts, which are 421 and 423. Of the districts in Region 4, these are probably two with the worst access to elk. An either-sex season for 5 weeks probably won't buy much. To get after them, some antlerless permits starting early and running late might do a better job. Another factor is that there is a large ranch that harbors the elk, but landowners like Mike Bay and Dave Hoon pay the consequences for lack of access to that one very large ranch. There is presently a 9-day either-sex season at the end of the season in that district. I'm not certain even a 5-week either-sex season will do the job. The elk tend to run to refuge during the general season, whereas perhaps they might be more generally available early and late. **Dascher** suggested having antlerless permits valid September 1, and then add more valid from December 1 to December 15. **Taylor** suggested going to February 15 instead of stopping at December 15. You're talking about a batch of permits starting September 1 valid through the general season, and another batch starting the end of the general season going to February 15. **Dascher** asked if the elk return to Mike Bay and Dave Hoon's property often enough, would they allow access so people could get to them? **Bay** said a lot of the ranchers won't allow access to those coming to them for permission. That's why he's pushing for an either-sex season because more would be killed that way. Just because someone has a permit doesn't mean some of the ranchers would allow access. **Dascher** said that's the idea of having an early and late season. Then should the elk return to the ranches that do allow hunting, hunters will have a chance to get some. **Mulligan** said they also must be careful of people buying a permit, who are then unable to find the elk. If there is an either-sex season, do I understand there is not a risk of over-harvesting the herd? **Taylor** said that is correct. **Mulligan** asked if there was also public ground there. **Taylor** said there is some, but it is not a factor of chasing them off the private ground onto the public ground. **Dascher** said they have met with Mr. Bay and Mr. Hoon repeatedly on this situation due to the neighbors. **J. Lane** said the late hunt would probably take care of more elk than anything else. **Taylor** said the nature of some of these elk is they are more available in September. **J. Lane** said that's fine, too, because if they have one might as well have the other. **Dascher** said if went with an either-sex season during the regular five-week general season, start September 1 with some antlerless permits and then go to February 1 with more antlerless permits, perhaps those combinations would get some elk harvested. **Mulligan** asked if two sets are needed or could just the existing special permits be

made valid from September 1 to February 15? **Taylor** suggests two different sets. An elk hunter with a permit the first of September is not usually interested on February 15. Suggest for 421-01 have 100 permits that are valid from September 1 through October 26 (good in both districts), then have an either-sex season during the general season, and for 421-02 have 100 additional permits valid late from December 2 through February 15 (good in both districts). The current regulations have a brow-tined bull season, so rather than an either-sex season it would be a brow-tined bull or antlerless elk season. **Mulligan** asked if that would do away with the 130 special permits good during the regular season. **Taylor** said, yes, they would because they'd have an either-sex season. **J. Lane** asked if would have to state "brow-tined bull or "antlerless." **Taylor** said would say "either-sex" but the present regulation is "brow-tined bull" so it would have to state that. **Walker** asked if displacing 130 permits in 421 and 100 permits in 423 with this new set, for a total of 230. **Taylor** said, "Yes, plus the either-sex, which is brow-tined bull, antlerless season." **Murphy** asked if the new game damage program there allowing landowners to determine a percentage of hunters coming for game damage hunts be used to help take elk out of there. **Taylor** said it is being used in one circumstance in HD 423. If hunters are interested in September 1, would get after the elk well before the need to use those measures. **Childress** asked for clarification: "Did you say 100 permits valid for each of the time periods and valid in both districts?" **Taylor** said, "Yes." **Erickson** said that for 421 it would say, September 1 - October 26, 100 permits for antlerless elk, also valid in 423; with 423 saying September 1 - October 26, 100 permits for antlerless elk, also valid in 421. **Taylor** said have a total of 200. **Erickson** said not then putting another batch in 423. **Taylor** said that is correct. **Walker** said the idea is the hunters would find the access. **J. Lane** asked Glenn Erickson to read the amendment.

Erickson - For HD 421, October 27 to December 1, either sex in the general season. Under Special Permits, would be 421-01, September 1 to October 26, 100 permits for antlerless elk, also valid in HD 423; and 421-02 would be December 2 through February 15, 100 permits for antlerless elk, also valid in HD 423. Then, HD 423 would read: For general season, brow-tined bull or antlerless, and for the special permits that would be deleted.

ACTION: ***J. Lane** moved to accept the amendment to Region 4 elk tentatives, as just read by Glenn Erickson. **Murphy** seconded. **Motion carried.***

ACTION: ***J. Lane** moved to accept Region 4's recommendations for elk tentatives, as amended. **Murphy** seconded. **Motion carried.***

J. Lane said he commended everyone in Region 4 for the efforts they did in the Sweetgrass Hills area. Understands it was a huge success.

Charlie Eustace, Wildlife Manager, Region 5 - For HD 500, propose increasing that from 6 to 8 days. In 502, institute an 8-day antlerless elk season. In 520, an antlerless elk season for 8 days for the entire district. In 520-02, expand by 30 permits for brow-tined bull or antlerless elk valid between the East Rosebud and the Stillwater River. In 520-03, propose those 50 permits now be for either-sex elk. Looking at the column with dates, indicate a change there because it says October 27 to December 1. However, in the description on the right-hand column it shows that what are either-sex elk permits would change to antlerless permits starting with December 2

through December 15. Dropped 520-01 as this was an early season hunt and the problem is taken care of. Two changes in 560: one for an 8-day, either-sex elk hunt at the beginning of the season. The other is in the Special Permit area where previously they had 560 divided into 01 and 02 sections. Recommend it now be one. For HD 570, which was a 6-day antlerless season, recommend that be an 8-day, antlerless season. In 575, here would institute 8 days of antlerless hunting, and also an archery season where there was none before. In 580, looking at an 8-day, either-sex elk hunt in portion of hunting district north of the Sweet Grass Creek. You'll notice that says "Antlered bull-valid in portion of hunting district north of Sweet Grass Creek, Special Permit (Apply by June 1, drawing only)." That is a general elk season and you should scratch that "Special Permit (Apply to June 1, drawing only)." Two other changes in 580 are the same: 580-01 and 580-06 where the antlerless permits would change to either-sex elk. There is a rather significant change in HD 590 where the recommendation is for a 5-week, general antlerless elk season. Would drop antlerless permits in 590-01 and 02 and keep the either-sex elk permits, They would be either sex during the general season, from December 2 through December 15 they would become antlerless only in 590-01, and go through December 31 in 590-02.

ACTION: *Walker* - Move to accept recommendations of Region 5 as presented. *J. Lane* seconded. *Motion carried.*

Harold Wentland, Wildlife Manager, Region 6 - Recommend combining HDs 621 and 623 into a new hunting district 621. Propose making elk permits valid in 631 and 632 also valid in 630. There is a correction where it shows a different quota on the right column from the left column, so 631-02 is correct at 25 and 65, 632-02 is correct at 10 and 40, 622-01 should be 30 and 622-02 should be 80. **Erickson** suggests taking what Harold has stated as what is proposed, and go with that at this point. **Hagener** asked about HD 690 where people have asked if those permits are also good in 680? **Wentland** said it's for archery only where they're good in both 690 and 680. **Mulligan** asked where the left-hand column came from? **Childress** said from last year's regulations. **Mulligan** said there are several problems. It says Dome Mountain is closed during the late season and it is not. The Commission did not approve that. In 610, under "Archery, Special Permit Only," it says, "See hunting district 401-06, which makes no sense. That's probably supposed to be under the line above it. **Hagener** said last year they discussed the districts around Fort Peck. Was there a fairly successful kill there this year? **Wentland** said he doesn't know. They had no frost until quite late and hunters had trouble finding elk. Do anticipate seeing game damage. Were very successful in 690, though. **Dascher** said for Regions 4 and 6, a disabled hunter contacted her about an opportunity to hunt elk in the 620s, 410 or 417, and wanted to know if we could do anything to help them have a special disabled elk hunt. **Wentland** said the program with whitetailed deer near Ft. Peck works out very well, but doesn't know how to make it work for elk. **Erickson** said the only thing he could think of was to set up something like in Region 3, where they have the youth permits. What you'd do is create a separate bunch of permits for that district where you want those kinds of permits.

ACTION: *Dascher* moved approval of Region 6 elk tentatives as presented. *Walker* seconded.

Erickson - One item Harold Wentland did not mention, which they just found. In HD 610 there should be an archery season for either-sex from September 7 to October 20. That was an error in the regulations last year so it is not a change, but a correction.

Motion carried.

John Ensign, Wildlife Manager, Region 7 - First proposal is for HDs 700, 701 and 703. In 700 propose consolidating permits in HDs 700 and 701 and make them valid in 700, 701 and 703. Also in HD 701 they have landowners with property on both sides in 590 and 701. The permits valid in 590 are also valid in that portion of 701 from what is referred to as the Meyers to Sumatra Road. Proposing an increase of either-sex permits from 100 to 125, and leaving antlerless permits at 300. Making the 125 either-sex permits valid in 700, 701 and 703, leaving antlerless at 300. Next proposal is for HDs 702, 704 and 705, and here propose another consolidation with a general antlerless elk season valid in all lands except the Custer National Forest. They are basically for a private land season. Also propose doubling either-sex permits in HDs 702, 704 and 705, as well as increasing antlerless permits to 75 valid on all land in HDs 702, 704 and 705, which includes the national forest.

ACTION: Walker moved to accept the department recommendations for elk tentatives for region 7. Dascher seconded. Motion carried.

Mulligan - Before leaving deer and elk regulations, wanted to bring up one item. Has received a lot of complaints from license agents with the special application process and people making errors on the applications because of language (this is on deer). The terminology problem is between Special Permits, and applying for B tags versus special tags for buck deer such as the very limited areas. In the regulations they are listed under Special Permits (B tags and the limited buck tags). But on the application, they are separated out by dollar amount that needs to be paid. Also, where it shows what licenses are available, nowhere does it show the deer special tags like for unlimited deer tags or the special deer tags. Deer B are listed but not the special buck tags. Somehow need to sort out all that language so people aren't making mistakes on the applications and amount of money they send in. **Erickson** said they were looking at changing the titles for those different sections. **Walker** asked the Wildlife Division work that up in the next month, send it out to the regions and to the Director. We can all spend time proofing one another's work and probably come out with a better product. Expect to see it by the end of January. **Mulligan** suggested doing it with the application, too.

ANTELOPE

John Firebaugh, Region 2 - HD 215 is their one antelope district and see an expanding population there. Want to add 5 doe/fawn licenses in addition to the 10 either-sex they presently have.

ACTION: Murphy moved approval of the department's proposal for antelope tentatives in Region 2. Walker seconded. Motion carried.

Glenn Erickson - The next change is Region 3 for HD 313. Want to delete HD 313 both from the map and regulations. That's the Gardiner area north of Yellowstone Park and that herd has declined from about 600 to 225 antelope. The number of antelope that move north of the park has gone down from about 150 to less than 30. There used to be a lot of private agricultural land there next to the park. That no longer exists.

In the 500 series, there are several hunting districts (500, 501, 510, 513, 530, 550, 560, 570, 571 and 590) where they offer the opportunity for successful applicants of an either-sex license to purchase one doe/fawn license in addition to their either-sex license. Trying to hold down the number of hunters to stay within landowner tolerance but still increase the harvest.

There is a similar situation in Region 7. They previously had one doe/fawn license available to those with an either-sex license. They propose adding opportunity for two doe/fawns to that, so each applicant who receives an either-sex license would be offered the opportunity to purchase up to two doe/fawn licenses.

ACTION: *Walker moved to accept department recommendations for antelope tentatives. Dascher seconded. Motion carried.*

20. Moose, Sheep and Goat Seasons and Regulations - Tentative

MOOSE

Glenn Erickson - For moose they propose no changes in Region 1.

In Region 2 they propose in HD 210 reducing the permit levels to 4 antlered bulls and increasing the antlerless side to 4. In 211 the ending date should be December 1. Also recommend decreasing the antlered bull to 3 and increasing the antlerless to 3.

In Region 3 recommend splitting HD 319 into HD 319 (Fleecer) and a new HD 341 (High Rye). In HD 326 used to have two season types and expanded that to include a third.

In HD 490 of Region 4 they want to split it into two new districts, 494 and 496.

In Region 5 both HD 514-01 and 514-02 are similar to last year. The 514-03, 2 either sex - valid in that portion of the Clark's Fork and Rock Creek drainages lying east of Highway 212 north of Red Lodge, entirely private land, access is extremely difficult. The 514-04 is Sept. 15 - Dec. 1, 3 antlerless permits - valid in that portion of the Clark's Fork and Rock Creek drainages lying east of Highway 212 north of Red Lodge, entirely private land, access is extremely difficult. HD 514-05 is 6 antlered bull permits - valid in the East Rosebud drainage and that portion of the Rock Creek drainage lying west of Highway 212 north of Red Lodge, also valid in 514-03 area. The last one is 514-06, Sept. 15 - Dec. 1, 3 antlerless permits - valid in the East Rosebud drainage and that portion of the Rock Creek drainage lying west of Highway 212 north of Red Lodge, also valid in 514-04 area.

ACTION: *Dascher moved to accept department's recommendation for moose tentatives. J. Lane seconded. Motion carried.*

SHEEP

Erickson - In Region 2, expanding HD 210 into the Gilbert Creek drainage. **John Firebaugh** explained that in HD 210, which is lower Rock Creek, they've had an increase in sheep distribution to the northwest part that is currently outside the hunting district boundary. They're

expanding the hunting district boundary to allow hunters the opportunity to pursue sheep in the area. District 213 is on the north side of Highway 1 and they've had sheep numbers expanding south of the highway into the Pintlers, so adding onto 213 to provide more opportunity for sheep hunters. In HD 283, which is the lower Blackfoot, currently the season closes Oct. 31 and propose extending that season through the end of November. **Walker** said that he remembers at a meeting in Missoula in May, someone in the audience spoke about a sheep season being too long, and sheep were coming into areas near that person's home on county roads and being shot. **Firebaugh** said that is HD 210, lower Rock Creek. The issue was that later in the season some of those sheep come down and are quite visible along Rock Creek Road. There were legitimate concerns from both safety and ethics standpoints that people didn't want to see hunters shooting sheep right off the road. Looking at sheep trophy forms since 1986, they had locations on 70 rams with 13 harvested within a half-mile of Rock Creek Road. They haven't had any other complaints and in checking with their wardens, they haven't had complaints either. Last year, with the warm and mild weather, 8 of the 10 sheep were taken during November. Their feeling is had it closed Oct. 31, those folks would have taken a smaller ram or not been successful. An either-sex sheep permit is hard to get, so want to continue providing as much opportunity as possible in terms of season length. Their recommendation is to maintain the current season length through November.

Mary Ellen Schnur, Fish and Game Committee Chairman, Montana Outfitters and Guides Assoc. - This matter of the season closure in HD 210 has been brought to the Commission before. It is not just one person who is concerned about this. Served on a hunter behavior advisory council. One of the big topics was public perception of hunting, and the idea there are places you do things and places you don't. You don't kill animals in people's yards, close to roads, etc. Can avoid problems by backing out that season.

***ACTION:** Murphy moved to approve the department's recommendation for sheep tentatives in Region 2. Walker seconded.*

Dascher - Because these are tentatives and there has been concern brought out, what would be wrong with closing the HD 210 season the end of October to see how it works? **Mulligan** said the wardens have never received a complaint, and 77% of the rams have been harvested in November. Biggest concern is jamming all the hunters into a shorter time period, which could create more problems. **Walker** said that it's a perception thing and agrees with perception provided by the gentleman in Missoula. John Firebaugh looks at the entire region on a daily basis so tends to attach credence to that. Don't feel strongly either way. **Dascher** said she doesn't either, but she has seen a lot of pictures of sheep in people's yards in the area so it could be a bad situation. If it was on a final, would say no, but on a tentative, why don't we throw it out and see what people have to say?

***ACTION:** Dascher moved to shorten the season in HD 210 to October 31. Walker seconded.*

Mulligan - I gave some wrong numbers. The 77% was next to the road. The November take is 37%. The highest percent take is in September. **Hagener** asked how much area is there of the district which is private land and where these sheep are concentrated? Are we closing a whole area when just a small part of it is of concern? **Firebaugh** said it is a narrow strip of land along

Rock Creek Road and for the most part probably less than a mile wide. Uphill from there it is mostly National Forest, or Plum Creek land opening to public land. There is no question that sheep do get down there. It is mostly younger rams, ewes and lambs that tend to frequent that bottom area. **Walker** asked if this could be addressed with a boundary definition change. **Firebaugh** said it would be challenging to close a strip right in the middle of the district, but it is a possibility. **Mulligan** said he had the impression some of the landowners wanted it open. **Firebaugh** responded that he hasn't heard from those. A number of years ago had as many as 30 ewe permits in that district. The warden said at that time there were some conflicts because the sheep were down in that lower strip. However, being on the system in recent years of 10 either-sex permits hasn't been an issue. From analysis they've done, don't see a need to take a month off the season. **Dascher** asked if his records show most of the sheep were killed earlier. **Firebaugh** said of the rams taken, 63% were taken before the end of October. Of the 70 on which they had kill locations, only 13 were taken within a half-mile of Rock Creek Road, and about half of those were November rams. It is a fairly small number. **Mulligan** asked what would happen if we made it good after November 1 on public land only? **Firebaugh** said that would be a possibility. **Dascher** said she doesn't want to deny someone the opportunity to hunt and to harvest a sheep. She just wants to get away from the perception of shooting them in someone's yard. **Firebaugh** said would have to consider Plum Creek land because even though it is private, it is on the hill where they want to encourage hunters to be. There is no block management land there. **Mulligan** asked if it could be identified as public and Plum Creek lands. **Firebaugh** said that should not be a problem. **Murphy** said he agrees with John's comment that a sheep permit is kind of a once-in-a-lifetime event. If he drew that tag, he would like as much opportunity as possible to take that ram. But also concerned about the safety issue and public perception.

ACTION: *Walker - Have a motion and second to limit the season to Oct. 31. Asked for a vote. Amendment failed by vote of 2 for (Dascher and Walker) and 3 opposed (Lane, Murphy and Mulligan).*

ACTION: *Walker then asked for a vote on the motion to accept the department's recommendations for Region 2 sheep tentatives. Motion passed unanimously.*

Joel Peterson - In Region 3, propose opening three new bighorn sheep areas. Hunting district 340 has been closed for a number of years as there was a disease die-off. They have since come back. Supplemented the area with transplants and is first on the list for a transplant this year. Recommend opening HD 340 for 1 either-sex permit valid Sept. 15 - Dec. 1.

Gayle Joslin, Wildlife Biologist, Helena area - They transplanted sheep into HD 381 about 9 or 10 years ago. Recommendation is to begin with 1 either-sex permit valid from Sept. 15 to Dec. 1. Since making that recommendation, have concern about a disease episode in HD 381. In a flight survey last week saw 30 live sheep and 6 dead ones. Three of the sheep went to the lab in Bozeman, but don't have results yet. This puts their recommendation up in the air and open for discussion. **Murphy** said he is still inclined to put a season in place there to provide the hunting opportunity. Would like to see at least 1 permit and possibly 2. **Mulligan** asked Joslin if she saw any legal rams when they did the flight survey. **Joslin** said that of the 30 they saw, only 2 were legal rams. Will fly the survey again in the next few weeks. Feels they missed 20 sheep.

Commissioner Murphy will accompany them. **Mulligan** said he is concerned about putting out tags when there isn't anything to shoot. Can put HD 381 in the tentatives, but change it if there are no legal rams. **Hagener** asked if this is the same group of sheep that cross the highway in that area. **Joslin** said they do; a group of about 13 cross Interstate 15. They come from Region 4 so are not part of this hunting district. From the Beartooth WMA several of the sheep transplanted in Region 4 have moved across the river and co-mingled with the sheep they transplanted on the Sleeping Giant side of the river. The transplant has been augmented but they move off and create new pods of sheep.

Tom Carlsen, Wildlife Biologist, Region 3 - They started transplanting in the Elkhorn Mountains of HD 380 in the mid-1990s, with 3 transplants totaling 75 sheep on 2 sites. Saw 106 sheep during their last flight survey in September. There were 25 rams. They are proposing 2 either-sex permits. The population objective for this herd is 250 sheep. Proposing a cut-off date of Oct. 31. About one-third of these sheep are migratory. The Elkhorns where these sheep are located has a high road density. For ethical reasons, felt it wise to have the Oct. 31 ending date.

Monte Schnur, sheep guide in HD 300 - Propose the bighorn sheep hunting season be extended to a 10-day season in HD 300; it is now a 6-day season. The season was shortened 10 years ago in HDs 300 and 301. In HD 300 there has been a low harvest in all years except 1994. No rams have been killed in the 6-day season during the last 3 years. For the past few years have had a 3-ram quota. To increase hunter opportunity, the season could be lengthened to 10 days and quota kept at 3. There was a mistake made here. It's a 2-ram quota. When they marked out HD 305 last year, they took one of the rams from the unlimited 300 district off, so at two rams now in HD 300. No rams were killed in the entire district last year. For the past 25 years in the entire hunting district, it is unusual for a ram to be killed in the first week of hunting no matter what the population is because many of the rams summer in Yellowstone National Park.

Joel Peterson - The 6-day season in HDs 301 and 302 was based on when they historically reached the quota in those unlimited districts. They used to have an open-ended date, but had problems shutting the season down when they reached the quota and then had an overkill. That is why they went to the 6-day season. Doesn't have the data he needs to support this proposal so can't endorse the proposal right now. Monte is correct in that they haven't taken sheep there in the past few years. Populations have rebounded some, but still have poor recruitment in that 300 area.

Kurt Alt, Region 3 wildlife biologist - Went to 6 days in HD 301 because with their 5-sheep quota, they were taken the first day. Going to 6 days took uncertainty out of it and they were mimicking what the harvest was doing. **Monte Schnur** said in HD 300 when it went to the 6-day season, there was no quota. Now they have one. **Peterson** said he has no problem putting it out in the tentatives. **Mulligan** asked why we're not killing any rams in that area. **Peterson** said it's probably because they are in Yellowstone Park and don't come out during that season. **Monte Schnur** said some are inside the park. It's a big area and is just tough to hunt. **Mulligan** said his tendency is to put it out as a tentative and see what people say.

ACTION: *Mulligan moved to extend HD 300 to a 10-day season from its present 6. Dascher seconded. Motion carried.*

Walker - In the tentative process, can you set a tentative license quota and go to a longer season, and at what point do we make that season? What causes you to change from open quotas to a permit situation? **Erickson** responded that the unlimited areas were established many years ago. Under an unlimited season, in some areas rams were taken so quickly that the opportunity was restricted. HD 301 was an example where sheep were taken fast. The unlimited areas were set up that way because there was a small populations of sheep or the national park was protecting a good segment of the population. Could let people hunt longer term because the sheep were harder to find and hunt due to topography, the national park, Wyoming border, higher elevation, etc. Montana is the only state where someone can apply for a license, automatically get it and go hunt sheep. Felt that was an important opportunity to give sportsmen as long as they could maintain it. That's why the unlimited areas have stayed that way to this point. Started shifting out of that in a few locations because of declining populations within those areas. That's why they split off HDs 304 and 305 and other portions of some districts. Tried to maintain some unlimited hunting there.

ACTION: ***Murphy** - Moved to accept the department's recommendations, as amended, on the Region 3 sheep tentatives. **Mulligan** seconded. **Motion carried.***

Graham Taylor - In the Sun River sheep herd of Region 4, focusing on Augusta, Gibson Reservoir, and Castle Reef, where they have too many sheep. Had an active trapping and transplanting program the last couple of years and scheduled again to do so this year. Have some management objectives for sheep and in HDs 422, 423 and 424 they are at or above objectives. Concerned with having too many sheep. Proposing to implement some limited number of ewe licenses now. If the trapping operation takes place, may take out 30 to 40 sheep and transplant them. With their proposal, saw an opportunity for someone who wanted to shoot a ewe. **Erickson** mentioned that the date shown as Nov. 25 for HD 422-01, 423-01 and 424-01 should be Dec. 1. The same is true in the 600 series districts.

ACTION: ***J. Lane** moved to accept department's recommendations for sheep tentatives in Region 4. **Murphy** seconded. **Motion carried.***

Childress - No changes are proposed in Region 5.

Harold Wentland - In HD 680 of Region 6, recommend going from 10 rams to 15 and increasing ewes from 10 to 20 for the season. A 3-year research project is now complete and the sheep population there increased from 297 sheep in the summer of 2000 to 373 in August of this year. Of those, 110 are rams and 39 are $\frac{3}{4}$ curl or bigger. Time to aggressively bring that population down. The research project indicated that all available habitat is occupied. Will try to take 20 to 30 sheep out of there for transplanting. Do not have a sheep season in 620. The population was partly affected by the mine, which is now closed, and a crash due to disease. There 20 or 30 sheep there and very few lambs. In the Mickey-Brandon Buttes part of HD 620, the population has crashed and essentially no lambs are being produced. Feel the range is over-used there. The Iron Stake Ridge portion is looking good except the range is starting to appear over-used. May be necessary to take more sheep out of there to keep it from bottoming out.

ACTION: *Dascher* moved to accept the department's recommendation for the Region 6 sheep tentatives. *Walker* seconded. **Motion carried.**

ACTION: *Walker* moved to accept the department's recommendations of no changes in Regions 1 and 5. *Murphy* seconded. **Motion carried.**

MOUNTAIN GOATS

Erickson - There is one change, which is for HD 460 of Region 4. The population there is expanding, and so they recommend increasing the permits based on that. Had a high count of 61 goats in March 2001. It is clearly a self-sustaining population and could easily handle the proposed increase to 5 either sex permits.

ACTION: *J. Lane* moved to accept the department's recommendation on the Region 4 goat tentatives. *Walker* seconded.

Mary Ellen Schnur - Have a goat population on Mount Edith and Old Baldy in the Big Belt area. That season was closed about 1986. We're consistently seeing 24 to 30 goats there and have for the last couple of years. At the same time also have a goat population in Avalanche Gulch. Tom Carlsen reports counting 38 when he flew the area. Two of the rod and gun club members counted 78 in one afternoon in the same area. If we have two different healthy goat populations, might start issuing permits. Recommend opening goat hunting on the east side of the Townsend valley in the Big Belts.

Tom Carlsen - Goats were transplanted there in 1970 and had a season in the early 1970s. In 1989 the season was closed because numbers had declined to 9 goats for 2 years in a row. This used to be HD 446. Flew it in October thinking if there were enough goats, could implement a season. Of the 17 they saw in the old HD 446, there were no kids and 3 yearlings. Based on this one survey, something is going on at least with the production of kids, and 17 goats is not enough for a huntable population. They did see 4 goats in a small section between the old HD 446 and Avalanche Gulch. Avalanche Gulch is an area they survey for mule deer and elk, they fly over it a couple of times a year, and try to count goats, too. In 2000 they saw 37 goats, in 1999 saw 28, in 1997 saw 21, in 1990 saw 29 and 24 in 1989. A person from Townsend got a ground count of 49 goats in 1995. Talked with a fellow who used to live at the mouth of Avalanche Gulch, and he typically saw a high count in the upper 40s. They've been slowly increasing and would feel comfortable recommending a season if they saw 60 goats from the air. Will fly it again towards the end of this month and look at it again. **Murphy** asked if implemented a season taking in all of those areas, could you give out a couple of tags? **Carlsen** said they did fly further north into HD 451 and only saw three goats. Currently, there are two permits there. Is a difficult area to survey because of the topography, especially with fixed wing aircraft. Trying to combine all the goats there to implement a season is a possibility, but would take more intensive monitoring. Concerned because saw no kids on Mt. Edith. Would like to take another look at the Avalanche group. **Walker** said he is hearing that they are not seeing enough goats to create a season. Do you feel you have not watched it long enough to establish a season? **Carlsen** said the Avalanche Gulch area is easier to survey. You can drive there and he does it every year trying to get a ground count, as well as get a count when flying deer surveys. That's the information he read, which is kind of marginal. The group on Mt. Edith has not been

surveyed since season closed. **Monte Schnur** said he is responsible for spotting the goats on Mount Edith. Last night at their rod and gun club meeting, members who were in Avalanche Gulch had photographs of all 78 goats with lots of kids. On Mt. Edith while on a pack trip, counted 24 goats and there must have been half a dozen kids. It was just nannies and kids. **Graham Taylor** showed on the map the area where they have two permits. When Kris DuBois flew it she only saw 3 goats. Have subsequently confirmed the presence of many more goats and had hunter observations of 25 goats. That demonstrates, in part, the difficulty of counting goats. Suggests taking existing HD 451, draw a line around Big Belts, which would then encompass an existing goat hunting district, Avalanche where there are goats and Baldy, where there are goats, make it one big goat hunting district and for the present time have 2 goat hunting permits. **Murphy** said if the numbers are there, would like to see a few more goats taken. Just expanding the district doesn't do anything as far as getting at that. **Graham Taylor** said expanding the hunting district does expand hunter opportunity. Given the sensitivity of the issue, would be a way of starting and could build from there. **Childress** said with that proposal, it would provide additional time for surveys. Then when they finalize the goat permits in June, they will have a better idea that can be incorporated into that larger district. **Walker** asked if they would have the opportunity to end up with a 451-01 and 451-02. **Joel Peterson** said they want to watch it carefully to be sure goats aren't all harvested out of Avalanche Gulch as it is the easiest to hunt. **Murphy** said he still is not certain how he wants this to go, but thinks there is opportunity for expansion of goat hunting in that area. If expanded, at least it would be in the tentatives so there could be discussion about the addition of other permits. Would like the boundary to include York, Avalanche Gulch, Mount Edith and Baldy areas.

ACTION: *Murphy moved to extend HD 451 south through the Mount Edith area. Mulligan seconded. Motion carried.*

ACTION: *Already have a motion on the table. (J. Lane had moved to accept the department's recommendation on the Region 4 goat tentatives and Walker seconded it.) Walker asked for a vote on the motion. Motion carried.*

21. Black Bear Seasons and Spring Quotas - Tentative

Erickson - There are two recommended change. First is a clarification in the regulations where it is stated, "It is illegal to harvest a black bear cub." The wording is confusing to some and so they have changed the wording to make it clear that cubs are illegal when they are alone or when they are with the mother. The wording is changed to: "It is illegal to harvest/take black bear cubs. Cubs are defined as bears less than one year old. It is illegal to harvest/take female black bears with young." **Walker** said when a cub is by itself, it is difficult to tell whether it is a full-grown bear. **Erickson** said a bear that is less than a year old by the hunting season is still quite small. A yearling, however, poses a problem. **Mulligan** asked if this should be part of the mandatory Black Bear ID program. **Erickson** said, "Yes, it is already added to the testing program." **Murphy** asked how many cases they've had over the years where cubs are being shot? **Jim Williams** said it gets interesting when you ask the question: how do you define "cub"? In Region 1 they harvest just over 50% of the bears during spring. Typically, a cub-of-the-year is easy to identify. But a yearling cub gets kicked off by the mother the second summer, and in the fall season it is legal to hunt them on their own. So the "cub-of-the-year" definition is

much cleaner. The definition applies to cub-of-the-year, not yearlings. **Erickson** said it's not a cub anymore once it is a yearling. But a yearling can be with the sow, and the wording in the regulations still make it illegal to take a female black bear with young. That is why the definition states one year or less for a cub. **Murphy** asked how many are brought in that are actually cubs. **Williams** said of 481 black bears they checked last year, they aged 477 of them and 220 were sub-adults. As far as the people ticketed, he doesn't know. But can get that information by going back to their database, which he will do.

Vito Quatraro said they are requesting the spring bear season in HD 317 be lengthened from May 31 to June 15. The reason is most years you can't get in there by May 31.

Peterson said that district is sandwiched between the Big Hole area (316), and the Yellowstone and Madison areas (341). They have more liberal seasons due in large part to greater security. In 317 where it is more open country, they were concerned with problem of over-harvest. Harvest in 317 shows they don't reach targets, so probably not a problem with extending that season as requested. They would not oppose extending that season as a tentative to see how the public views it. One target they try to meet is the harvest not exceed 40% females. The average age of the females runs between 4 and 6 years. Would like to see a median age of 6 years. For males would like the median age to be 4 or greater. Do have a more conservation season there, but wouldn't oppose extending it. The benefit it has is to make the closing seasons coincide with adjacent districts. **Mulligan** asked about the numbers in the other two districts and if they need to take pressure off other districts. **Peterson** said they are in good shape. In the Big Hole area they have never exceeded the 40% female harvest. In the Yellowstone area the numbers are even better.

Jim Williams said he has the data Commissioner Murphy requested. Last year for males, 14 yearlings were harvested, the year before 33, the year before that 44 and 90 in 1997. So they are a significant component of the harvest after 12 months of age, females much less so. **Murphy** asked about cubs-of-the-year taken. **Williams** said they checked 1 male last year, the year before 2 males, in 1998 3 males, and in 1997 there were 3 that were cubs-of-the-year. So it does occur, but it is a small percentage. **Murphy** asked if those were illegal. **Erickson** said they technically were under the regulation, but because of the wording they didn't feel comfortable with prosecuting. That wording is what they want to clarify now, which is that cubs are illegal, and define cubs to be one year or less. **Walker** asked at what age a cub is kicked out. **Williams** said by fall of the second year, but they can go two seasons. Typically, it is 1½ years. The numbers he gave for cubs killed are from an annual harvest number, which includes both spring and fall seasons. **Walker** said the definition seems to be "with the sow or not with the sow." He suspects there are yearling cubs killed that are with the sow, but they happen to be separated from her at the moment they are killed. We see those as a legally killed yearling cub, but they may not be. **Erickson** said under the change in definition they would still be legal. **Walker** said with the change in definition they would still be legal unless they were at the sow's side. **Williams** said that is correct. **Walker** said he still has a problem with it in that if you are 200 yards away and you have no defining landmarks, it is hard to tell. **Williams** said their concern was to not unnecessarily encumber sportsmen hunting bear, so they were careful with the definition to make sure it said "cub-of-the-year."

ACTION: *Mulligan moved to extend the black bear season for HD 317 to June 15; Murphy seconded. Motion carried.*

Quatraro asked to see the data broken down between spring and fall seasons instead of just annual harvest data. **Mulligan** asked when the bear study information will be ready. **Erickson** said there is a black bear study for the Swan drainage, which is a 10-year study. The information on harvest is broken down by season and by age.

Erickson - There is one other change, which is a boundary change for HD 520. Clarifying the boundary between 520 and 580. The present boundary description of 520 includes land that was already included in 580. Made a boundary clarification and changed the legal description to reflect that, and it is in the department recommendations for black bear tentatives.

ACTION: *Mulligan moved to accept department's recommendations for the tentative black bear regulations, as amended. Dascher seconded. Motion carried.*

Murphy - Still not sure with numbers given on cubs that have been shot, what it is we are talking about. Do we want to put this kind of legal description in there? Will we accidentally force more cubs to be shot instead of less? **Firebaugh** said that in terms of bears harvested in Region 2, since 1986 they have had 9 male cubs-of-the-year and 8 females less than a year old harvested. They have had nothing in the last couple of years, either male or female. **Mark Earnhardt** said he put this to the warden captains when the definition came up, and they had no problems with it. Definitions help with enforcement, but human behavior you cannot predict. **Peterson** said he believes this recommendation originated from Enforcement in Region 3. **Williams** said they share their concern and why they were adamant about 12 months or younger for yearling cubs. **Dascher** asked if they could add this to the bear ID testing? **Erickson** said they could. **Monte Schnur** said he concurs with Mike Murphy. He has had hunters whom he advised not to shoot, but they shot anyway as they were so excited. On bear identification, the little bears have big ears. However, as they get older the ears don't show up as much. There are little things you can look for to tell the difference. **Murphy** said he is concerned with young hunters who might do this, and then find the cub they shot is illegal. **Mulligan** asked where the original intent that it be illegal came from. **Erickson** said it was an item in an EIS as a protective measure for the bear population. The wording has been there all along; they are just clarifying it. It was originally used to provide protection to the reproductive segment of the bear population. **Mulligan** said he is struggling with the same thing Commissioner Murphy is, but on the other hand making it legal to kill a cub could cause lots of problems with non-hunting public. Murphy asked if we need to make a change. How about letting it go as is and leave discretion there for the regions? **Earnhardt** said if there is concern cubs are taken, it must be expected there be an enforcement component to that. You need to go one way or the other. Either say it is okay to kill cubs, or have a definition so it is consistent. **Walker** asked if when looking at this change, did you consider looking at the existing wording? It says that it is illegal to harvest or take a female black bear with young, or individual cubs with such female black bears. It would be an addition to your existing definition of individual cubs with female bears. The intention is clear; do not want cubs killed. If the hunter makes a mistake, warden has to go with what the hunter tells them. **Erickson** said the warden would have to show that the hunter shot the cub when the sow was there. Otherwise, just bringing in the cub provides no evidence and they would not be

able to prosecute. **Murphy** said from an enforcement standpoint, if it was questionable and the warden did not believe what the hunter said, it would be a big workload to have enforcement research those situations. You can tell whether or not a sow was there by returning to the scene. **Earnhardt** said even going back to the scene, it's one word against the other. **Murphy** said he would hate to see a young hunter's attitude toward hunting destroyed because of a situation like this.

ACTION: *Walker - Have a motion and a second to accept the department's bear recommendations, as amended. Motion carried 4-1 (Murphy voted against it).* **Walker** asked if the department could make more effort in the tentatives to add further clarification about hunter responsibility in determining cub status, and put that into the bear identification movie. **Erickson** said okay.

22. 2003 General Season Framework Dates - Tentative

Erickson - The next item is tentative hunting season framework dates. Not proposing any changes to the framework dates. Might mention, however, that 2003 is not shown for upland game birds as want to do upland birds annually utilizing some of their survey information. Intend to develop an upland game bird management plan this year and that plan may dictate some changes. Didn't want to set those dates out too far before the plan was completed. Set the framework dates two years in advance to give people an idea so they can book their vacations and hunts, and outfitters can plan. When that is not done and have to wait until February for the next year, there is not adequate time to book hunts. **Dascher** said a lot of constituents and landowners in her area are not at all happy with residents getting a two-day start on upland birds. **Erickson** said they will deal with that under upland birds and then correct the date based on whatever decision is made.

ACTION: *John Lane moved to accept the department's recommendations on framework dates; Walker seconded. Motion carried.*

23. Upland Bird Seasons - Tentative

Erickson - There is only one recommended change, which is clarification in wording under "RESTRICTED METHODS" for upland game bird hunting. Adding that "It is unlawful for anyone to hunt or attempt to hunt any game birds by the aid or with the use of any set gun, jacklight, spotlight or other artificial light, trap, snare or bait (MCA 87-3-101)." That was left out of both upland game birds and spring turkey, and we talked about that in the spring turkey discussion. The other issue is a closure in Golden Valley County.

Charlie Eustace - Proposing a hunting closure on sage grouse in a portion of Golden Valley County. A couple of years ago the Western Association of Fish and Wildlife Agencies signed an agreement of guidelines for management and conservation of sage grouse. Montana has put together a Sage Grouse Technical Committee, which is drawing up similar guidelines for Montana. Agreed to follow the guidelines in the WAFWA document unless there was good evidence to do otherwise. One recommendation is not take more than 10% of the sage grouse population through hunting. Felt that was conservation and they could take more sage grouse.

Propose in Region 5 to set up a study area that would close a portion of Golden Valley County and then compare it with another open area. Are looking at an area with the west boundary being the deer and elk HDs 511 and 530. This area would remain closed and they will compare it with a similar area north of Roundup. Both areas are in the Block Management program. Looking in the literature on effects of hunting, one source says no effect, another will say adding hunting mortality plus winter weather does have an effect. Most studies do not compare two sites: one closed to hunting and one open to hunting. They don't make an attempt to measure hunting mortality. What they propose to do is to put radio collars on hens in both areas comparing mortality on hens in the area open to hunting versus the one not hunted, and then look at the spring breeding populations. It is a Block Management area and the majority of that Block Management area has sign-in boxes, so there are no restrictions on the number of hunters who can hunt there. Will be a two-year study. After they measure the baseline mortality from hunting, then will try to increase the mortality from hunting to see at what level they must get before have an effect on sage grouse. Will also use wing returns to get age/sex ratios.

J. Lane asked if the affected property owners have been informed? **Eustace** said they have contacted the people in the area where it would be closed and they are very supportive. **Murphy** asked if the areas are similar as far as predator pressure. Eustace said they are as far as they know. Did a three-year predator study in this area from 1997-2000, and did intensive predator control. With respect to coyotes, they were similar bases. The areas are probably 10 miles apart so the topography, habitat and predators are very similar. **Walker** suggested adding some words to thank sportsmen and landowners for their cooperation, and put that in the regulations.

Erickson said that concludes any changes the department recommends.

Dascher said she has a change. The subject of different opening dates between residents and nonresidents was highly volatile in the northeastern corner of the state. She had lots of calls and Director Hagener said he had lots of callers who contacted the Helena office about this issue. There were landowners who closed their lands during the early opening for residents. Had Block Management cooperators who closed their lands the opening weekend, which reduced their payment. They have built a tradition in that area of catering to the non-resident bird hunters. They have fancy meals for them when they come in Friday night, they have banquets on Saturday, etc. It brings a lot of money into the economy there. It was devastating to the businesses. A lot of residents thanked her for the opportunity to hunt early, and many opposed it because they couldn't hunt with their non-resident buddy. Is proposing to exempt Daniels, Sheridan and Roosevelt Counties. Let them open their dates just like everyone else, and the rest of the state stay as they are. **Hagener** said he would echo what Commissioner Dascher has said. He had numerous calls and contacts from non-residents, and some said they won't come back again. The complaints he received from residents were in that corner of the state. Said he didn't feel there was a significant drop in the licenses sold in those counties. **Wentland** said that besides the two-day delay for non-resident hunters, had a weather problem, so hard to say what was the real cause. Dascher said the main thing she heard from non-residents was that not only did you double my license fee, but you also cut off the opening weekend. Landowners were frustrated, too, because they have built this clientele and catered to these non-resident hunters. Childress said he is not sure they can legally do this by singling out certain counties for exemption. But that doesn't mean we can't entertain the idea of doing it. Dascher said when this

originally came up, there was discussion then to split the state. **Mulligan** asked John Ensign what they saw in southeastern MT. **Ensign** said there were comments from some non-residents, but none from the landowners.

ACTION: Dascher** moved that the opening day be adjusted in Daniels, Sheridan and Roosevelt counties to make the non-resident season for pheasants only correspond to the resident season. **Walker** seconded. **Motion carried.

ACTION: Mulligan** moved to approve the upland bird season tentatives as recommended by the department with the change for sage grouse, as well as the amendment regarding the season for pheasants in the three northeastern Montana counties. **Dascher** seconded. **Motion carried.

ACTION: Dascher** moved to approve the minutes of the November 8, 2001 Commission meeting. **Murphy** seconded. **Motion carried.

Meeting adjourned at 5:10 p.m.

Approved this 24th day of January, 2002

Dan L. Walker, Chairman

M. Jeff Hagener, Director